United States Court of Appeals

for the Second Circuit

APPENDIX

75-1118

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United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 75-1118

UNITED STATES OF AMERICA,
Appellee,

—v.—

FRANK COTRONI and FRANK DASTI,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

APPELLANTS' APPENDIX
Volume I—Pages A-1 to A-810

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UNITED STATES COURT OF APPEALS
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SECOND CIRCUIT

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PAGINATION AS IN ORIGINAL COPY

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D. C. Form No. 100

CRIMINAL DOCKET

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74Cr695 MISHLER, J.

~~DOOLING, J.~~

TITLE OF CASE	ATTORNEYS
THE UNITED STATES vs. X FRANK COTRONI X FRANK DASTI GUIDO ORSINI PAUL ODDO JORGE ASAF Y BALA CLAUDIO MARTINEZ	For U. S.: 73823 Puccio Oddo-Max Fruchtman 250 West 57th St. N.Y. PL7-4555 COTRONI: ~~Moses-Polakoff~~ JOHN TANNUZZI ~~450 Park Ave. NYC. 10022 371-1700~~ For Defendant: DASTI: MICHAEL KLAR 1501 Franklin Avenue Mineola, N.Y. 11501 516 - PI 7-1100

Did conspire to import cocaine, for sale etc.

ABSTRACT OF COSTS	AMOUNT		CASH RECEIVED AND DISBURSED				
			DATE	NAME	RECEIVED	DISBURSED	
Fine, (Cotroni)	20000	00	3-24-75	Notice of Appeal (no fee) deft DASTI			
Clerk,							
Marshal,			4-2-75	Notice of appeal Cotroni	5 —		
Attorney,			4-3-75	Paid to Treas.		5 —	
Commissioner's Court,							
Witnesses,							

DATE	PROCEEDINGS
10-9-73	Before Travia J - Indictment ordered sealed by the Court. & filed. Bench Warrants ordered for all defts. Bench Warrants issued.
10/15/73	By DOOLING,J.- Order filed that the above sealed indictment be opened by the Clerk of the Court for the limited purpose of reproducing as many copies of the indictment as are necessary for extradition proceedings Itiis further ordered that after the reproductions have been completed the indictment be resealed and not made public(except in connection with extradition proceedings) until further order from this court
10/17/73	Two Bench Warrants, Two affidavits of A.U.S.A. Puccio and Giuseppe Catania, Grand Jury minutes of 9/27/73 and 3 of 10/9/73 filed and sealed
11-9-73	Before MISHLER, CH J- Case called - deft DASTI present without counsel - Indictment ordered unsealed - Court directed that the Grand

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DATE	PROCEEDINGS
	Jury Minutes and exhibits be sealed - deft advised of his rights by the court - court to appoint counsel for the deft - pleading adjd without date.
11-9-73	By Mishler, Ch J - Order appointing counsel filed (DASTI)
11-9-73	Bench Warrants retd and filed - Unexecuted as to defts Cotroni/ and Orsini (defts out of the country as per Asst Puccio)
11-12-73	Affidavit of THOMAS PUCCIO filed.
11-12-73	Order filed that Grand Jury minutes and exhibits pertaining to this case be opended and made available for extraditions proceedings, and further ordered that after reproductions, file should be resealed by Clerk of th Court
11-22-73	Affidavit of Giuseppe Catania filed
11-14-73	Petition for Writ of Habeas Corpus Ad Prosequendum filed (OTTO)
11-14-73	By MISHER, CH J - Writ Issued, ret. forthwith (ODDO)
11-27-73	Before MISHLER,CH.J.- Case called- Deft Oddo produced in court on a bench warrant without counsel- Deft arraigned and after being advised of his rig by the court, the court entered a plea of not guilty on behalf of the deft set down for all purposes on 12-7-73
12-4-73	Writ retd and filed- Executed(ODDO)
12-7-73	Before MISHLER,CH.J.- Case called- Defts Dasti and Oddo present with cou Defts Dasti and Oddo arraigned and each on their own behalf neters a ple nto guilty-. Case set for 3-18-74 for trial
12-7-73	Notice of appearance filed (ODDO)
12-10-73	By Mishler, Ch J - Certificate of Engagement filed - The undersigned hereby certifies that the following lawyers representing the following defts are required to appear in this court to proceed to trial in the above-case on the 18th day of March 1974 at 10:00 am. Michael Klar,Esq. atty fpr deft DASTI, Max Fruchtman, Esq. atty for deft ODDO. This certificate is issued in accordance with the practice approved by the Board of Justices of the Supreme Court of the State of NY, Second Judicial District and the Board of Judges of this court.
12-13-73	Writ returned and filed - Executed -Deft Paul Oddo retd to whence he ca USP., Atlanta,Ga.
12-18-73	Copy of extradition papers of deft Cotroni and Orsini filed
12/24/73	Notice of Readiness for Trial filed.
-11-74	Letter from Michael, Klar, esq. dated 3-7-74 filed request that trial be adjd on consent to such date in the middle of May, 1974
11-74	Letter to M. Klar, esq. from chambers that trial is adjd upon deft Fr

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DATE	PROCEEDINGS
3-18-74	Before MISHLER, CH.J.- Case adjd without date for trial on consent (DASTI, ODDO) Cotroni's anticipated extradition from Canada
3-28-74	Petition for writ of habeas corpus ad prosequendum filed (ODDO)
3-8-74	By MISHLER, CH.J.- Writ issued.ret. 4-5-74 (ODDO)
4-26-74	Writ retd and filed- executed(ODDO)
6-21-74	Before MISHLER, CH.J.- Case called- Marked ready for trial as to deft. Cotroni, Dasti and Oddo on 10-18-74
7-10-74	By MISHLER, CH.J.- Order for expert services filed (FRANK DASTI)
10/15/74	Copy of letter from Michael Klar, esq. to A.U.S.A. Puccio dated 10/11/7 filed re:deft FRANK DASTI
10-23-74	Before MISHLER, CH J - case called - deft Cotroni produced in Court on a bench Warrant - counsel not present - Interpreter Joelle McCall present - deft advised of his rights by the court - pleading set down for Oct. 31, 1974 at 9:30 am - bail set at $1,500,000.00 surety company bond or cash. If bail is posted the court should be advised before it is accepted.
10/29/74	Copy of letter to A.U.S.A. Puccio from Max Fruchtman, esq. filed re: deft ODDO and request for documents
10-31-74	Notice of Appearance filed (Frank Cotroni)
10-31-74	Before MISHLER, CH J - case called - deft COTRONI & counsel present- Moses Polakoff, Esq. - Interpreter Mrs. McCall present - deft arraigned and enters a plea of not guilty - motion argued for reduction of bail is denied - motion argued to adjourn trial date is denied - Nov. 18, 1974 for trial.
10/31/74	Stenographers Transcript dated 10/23/74 filed
11/1/74	Petition for writ of habeas corpus ad prosequendum filed(DASTI)
11/1/74	By MISHLER, CH.J.- Writ issued, ret.- forthwith (DASTI)
11-1-74	Govts Discovery Material filed and letter of Nov. 1, 1974 from Thomas P.Puccio filed . Copies mailed to attys . (Frank Cotroni)
11-4-74	Letter filed dated Oct. 31, 1974 re deft Oddo received from U.S. Dept. of Justice, Bureau of Prisons, Lewisburg, Pa. from Prison Doctor as to his medical condition(retd to Chambers)
11-4-74	Stenographers transcript filed dated Oct. 31, 1974 (COTRONI)
11/6/74	Letter from Judge Mishler to Mac Fruchtman, esq. filed re:deft ODDO
11/8/74	Writ retd and filed- executed (DASTI)
11-8-74	Letter filed dated Nov. 8, 1974 re deftFrank Cotroni from AUSA T.Puccio with folder containing additional items of discovery (numbered 28 to 42 etc)

DATE	PROCEEDINGS
1-12-74	Before MISHLER, CH J - case called - on motion for wire taps, etc. Motion adjourned without date.
1/14/74	Before MISHLER, CH J.- Case called- Defts COTRONI and DASTI present- with counsel- deft ODDO not present- counsel present- Hearing held on motion to suppress- Hearing contd to 11/29/74, at 10:00 A.M.- Case adjd for trial on 1/6/75 at 10:00 A.M.
11-20-74	Unfiled Temporary Restraining Order and copy of Letter to Hon. Louis Gengler, Warden, House of Detention, noting that case to go to trial on 1-6-75 and to detain deft FRANK DASTI at West St. , etc. (received from Chambers)
11-21-74	Folder containing additional items of discovery filed (numbered 43 to 64) with cover letter of Nov. 20, 1974 from AUSA Puccio to counsel Moses Polakoff, Esq., Max Fruchtman and Michael Klar.
11/26/74	Notice of readiness for trial filed
11/26/74	Voucher for expert services filed (Private investigator) (DASTI)
11/29/74	Voucher for expert services filed (DASTI) (Court Reporter)
12-2-74	Before MISHLER, CH J - Case called - hearing contd on motion to suppress- substitution of Mr. Iannuzzi for deft Catroni for Mr. Polakoff granted - Hearing contd to Dec. 27, 1974 at 10:00 am.
12-2-74	Stenographers transcript filed dated Nov. 29, 1974.
12/4/74	Stenographers Transcript dated 11/14/74 filed
12/5/74	Voucher for Expert Services filed (F. DASTI)
12/10/74	Govt's supplemental discovery filed
12/11/74	Notice of motion to dismiss indictment etc. ret. 12/27/74 (Frank Cotroni)
12-13-74	Deft Cotroni's Memorandum of Law filed as to the requirement of a proper Foundation as a precondition to the admissibility of Tale Recording, etc.
12/20/74	Letter from Anthony Casella, M.D. to chambers filed re:deft ODDO
12/23/74	Memorandum of law in support of motion to dismiss, etc. filed (COTRONI)
12/24/74	Copy of Letter to John Iannuzzi, esq. from A.U.S.A. Puccio and accompanying letter from Mr. Puccio to Judge Mishler filed
12/30/74	Before MISHLER, CH.J.- Case called- Hearing on motion to suppress contd fro 11/29/74-Hearing contd to 12/30/74 at 10:00 A.M.
12/30/74	Before MISHLER, CH.J.- Case called- Hearing on motion to suppress contd- Defts Cotroni and Dast present with counsel- Counsel for deft Oddo present- Hearing contd to 12/31/74 at 10:00 A.M.
1-7-75	Voucher for Expert Services filed (Deft DASTI)
~~1-7-75~~	~~Voucher for compensation of counsel M.Klar(deft Dasti) forwarded to~~ Court of Appeals for approval with Memorandum in support of same

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DATE	PROCEEDINGS
12/30/75	Before MISHEER,CH.J.- Case called- Hearing on motion to suppress cont Defts Cotroni and Dasti present with counsel- Counsel for deft Oddo present- Hearing contd to 1/2/75 at 11:00 A.M.
1-2-75	Before MISHLER, CH J - case called - motions argued to dismiss the indictment is denied; motion for Bill of Particulars granted and denied as indicated on the record; motion to produce books, etc. argued; motion granted and denied as indicated; motion for severance denied as to defts COTRONI & DASTI - decision reserved as to deft ODDO.
1-2-75	Before MISHLER, CH J - case called - defts COTRONI & DASTI present with counsel - deft ODDO not present, counsel Gerald Rosenthal present . Hearing on motion to suppress contd - hearing on methods of selecting Grand Jury held - Hearing concluded - Hearing on motion to suppress contd to Jan. 6, 1975 at 9:30 am.
1-6-75	Before MISHLER, CH J - Case called - defts COTRONI & DASTI present with counsels - deft OTTO not present - counsel present - hearing on motion to suppress continued - both sides rest - motion to suppress is denied - hearing concluded - On motion by deft ODDO & with consent of the government deft ODDO is severed from the trial. Trial Ordered & BEGUN - Jurors selected and sworn - trial contd to 1-7-75 at 10:00 am.
1-6-75	Govts Bill of Particulars filed.
1-7-75	Before MISHLER, CH J - case called - defts COTRONI & DASTI present with counsel - trial resumed -Interpreter Libya Clancy sworn - Trial contd to 1-8-75.
1-8-75	Before MISHLER, CH J - case called - defts COTRONI & DASTI Present with counsels - trial resumed - trial continued to Jan. 9, 1975 at 10:00 am.
1-9-75	5 stenographic transcripts filed (dated Nov. 11, 1974, Dec. 30, 1974, Dec. 31, 1975, Jan. 2, 1975 and Jan. 6, 1975) forwarded to Chambers.
1/9/75	Before MISHLER, CH.J.- Case called- Deft COTRONI and DASTI present with counsel- Trial resumed- Motion by deft Cotroni for mistrial denied- Trial contd to 1/10/75 at 10:00 A.M.
1-10-75	Before MISHLER, CH J - case called - defts COTRONI & DASTI present with counsels - trial resumed - Trial contd to 1-13-75.
1/10/75	By MISHLER CH.J.-Memorandum of Decision and Order filed denying defts motion to suppress (COTRONI, DASTI)

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DATE	PROCEEDINGS
1/13/75	Before MISHLER, CH.J.- Case called- Defts Cotroni and Dasti present-withhcounsel-Trial resumed- Motion by deft Cotroni for mistrial denied-Trial contd to 1/14/75 at 9:30 A.M.
1-14-75	Petition for Writ of Habeas Corpus Ad Testificandum filed(J.Cordovana)
1-14-75	By Mishler, Ch J - Writ Issued, ret. forthwith.
1-14-75	Before MISHLER, CH J - case called - defts present with attys - trial resumed - Motion by deft COTRONI for a mistrial is denied - Trial contd to Jan. 15, 1975 at 9:30 am.
1-14-75	By MISHLER, CH J - Memorandum of Decision and Order filed denying motion of deft Dasti to suppress tapes.
1-15-75	Before MISHLER, CH J - case called - defts present with attys - trial resumed - motion by defts for Judgment of Acquittal -denied - Trial contd to Jan. 16, 1975 @ 9:30 am
1-16-75	Before MISHLER, CH J - case called - defts & counsels present -trial resumed - Both sides rest - trial contd to Jan. 20, 1975 @ 9:30 A.M. (COTRONI & DASTI)
1-17-75	Voucher for Expert Services filed (deft Frank Dasti)Michael Klar,Esq.
1/20/75	Before MISHLER, CH.J.- Case called- Defts CONTRONI and DASTI present - with counsel- Trial resumed- Trial contd to 1/21/75 at 9:30 A.M.
1-21-75	Before MISHLER, CH J - case called - defts present with attys - trial resumed - at 12:45 PM the Jury retired for deliberations - at 11:10 PM the Jury returned and rendered a verdict of guilty on counts 1 & 2 as to defts CONTRONI & DASTI - Jury polled - Jury discharged - all motions until time of sentence - sentence adjd without date - trial concluded.
1-21-75	By MISHLER, CH J - Order of Sustenance filed (Dinner)
1-21-75	By Mishler, Ch J - Order of Sustenance filed (Lunch)
1/27/75	Stenographers Transcript dated 1/21/75 filed
1-27-75	Three stenographic transcripts filed (pgs 1134 to 1572)
1-28-75	Eight (8) stenographic transcripts filed(one dated 12-27-74; Jan. 6, 1974, Jan. 7, 1975; Jan. 8, 1975; Jan 9, 1975; Jan. 10, 1975; Jan. 13,1975 and Jan. 20, 1975 respectively.
2-4-75	Voucher for Expert Services filed.
3/7/75	Copy of letter dated 2/28/75 filed from J. Iannuzzi to Mr. Puccio
3-24-75	Affidavit of THOMAS J. O'MALLEY filed(received from Chambers)
3-24-75	Before MISHLER, CH J - case called - deft DASTI & counsel Mr.M.Klar present - motion by deft for mistrial is denied - deft is sentenced on counts 1 and 2 for 15 years on each count to run concurrently and to run concurrently with sentence imposed on 10-24-73 in the District of N.J.

73 CR-898
CRIMINAL DOCKET

A 7

DATE	PROCEEDINGS
	Court advised the deft of his right to appeal. Clerk to file Notice of Appeal on behalf of deft DASTI iwhout fee.
3-24-75	Judgment & Commitment filed - certified copies to Marshal (DASTI)
3-24-75	Notice of Appeal filed without fee(DASTI)
3-24-75	Docket entries and duplicate of Notice mailed to C of A (DASTI)
3-24-75	Before Mishler, Ch J - deft COTRONI & counsel John Iannuzzi present - motion by the deft for a mistrial is denied -deft is sentenced to imprisonment on count 1 for 15 years and a fine of $20,000 and a term of imprisonment on count 2 for 15 years to run concurrently with terms on count 1. Court advised deft of his right to appeal. Motion by deft for a reduction of bail is denied.
3-24-75	Judgment & Commitment filed - certified copies to Marshal(COTRONI(
3-24-75	By MISHLER, CH J - Memorandum of Decision and Order filed denying motion for a new trial. (Cptroni & Dasti)
[illegible]	
3-24-75	Letter filed dated Mar. 24, 1975 from Jacob Mishler, Chief Judge and copy of Memorandum dated Mar. 12, 1975 from Chief Judge Mishler to Gerard J. Fennelly Probation Officer., re defts. COTRONI & DASTI.
3-29-75	Certified copy of Judgment and Commitment retd and filed - deft COTRONI delivered to Federal Det. Headquarters.
3/27/75	Two stenographers Transcript dated 3/24/75 filed
3-27-75	Judgment & Commitment retd and filed - deft Dasti delivered to Federal Detention Headquarters.
4-2-75	Stenographers transcript filed dated 3-24-75(Dasti)
4-2-75	Notice of Appeal filed (COTRONI)
4-2-75	Docket entries and duplicate of Notice mailed to the C of A(COTRONI)
4/10/75	Copies of Orders received from court of appeals and filed that record be docketed on or before 9/14/75 (DASTI, COTRONI)
4-14-75	Letter of 12-5-74 to Mr. Puccio from John Nicholas Iannuzzi filed.
4-14-75	Affidavit of THOMAS P. PUCCIO filed
4-14-75	Govts Memorandum of Law filed
4-14-75	Letter of Dec. 10, 1974 to Mr. Puccio filed from N.Iannuzzi, Esq.
4-14-75	Letter to counsels filed dated Nov. 28, 1974.
4-14-75	Appendix #1 and Appendix #2 filed.
4-14-75	Letter of Nov. 27, 1974 to Mr. Puccio from John Iannuzzi, Esq.
[illegible]	[illegible]

DATE	PROCEEDINGS
4-14-75	Deft Coctoni's Memorandum of law etc filed.
4-14-75	Memorandum filed in support of motion to dismiss (Cotroni)
4-14-75	Letter of Dec. 23, 1974 to Mr. Puccio from John N. Iazzuzzi filed.

TPP:las
F.#733,823

A 9

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA

- against -

FRANK COTRONI
FRANK DASTI
GUIDO ORSINI
PAUL ODDO
JORGE ASAF Y BALA
CLAUDIO MARTINEZ,

Defendants.

- - - - - - - - - - - - - - - - - - - X

73CR 898

Cr. No. _____
(21 U. S. C., §173
21 U. S. C., §174
18 U. S. C., §2)

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
★ OCT 9 1973 ★
TIME A.M. _____
P.M. _____

THE GRAND JURY CHARGES:

COUNT ONE

On or about and between the 1st day of December 1970 and the 30th day of April 1971, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, FRANK COTRONI, FRANK DASTI, GUIDO ORSINI, PAUL ODDO, JORGE ASAF Y BALA and CLAUDIO MARTINEZ, the defendants, together with Giuseppe Catania, named herein as a co-conspirator but not as a defendant, and others known and unknown to the Grand Jury, wilfully, knowingly and unlawfully did combine, conspire, confederate and agree together and with each other to violate Sections 173 and 174 of Title 21, United States Code.

1. It was part of said conspiracy that the defendants and co-conspirators fraudulently and knowingly would import and bring into the United States a quantity of cocaine, a narcotic drug, contrary to law.

2. It was further a part of said conspiracy that the defendants and co-conspirators wilfully, knowingly and unlawfully would receive, conceal, buy, sell and facilitate the transportation, concealment and sale of a quantity of cocaine, a narcotic drug, after the

narcotic drug had been imported and brought into the United States, knowing the same to have been imported and brought into the United States contrary to law.

3. It was further a part of said conspiracy that the defendants and co-conspirators would conceal the existence of the conspiracy and would take steps designed to prevent the disclosure of their activities.

In furtherance of the conspiracy and to effect the objects thereof, the following overt acts, among others, were committed in the Eastern District of New York and elsewhere:

OVERT ACTS

1. On or about the 8th day of January 1971, co-conspirator Catania met with defendants COTRONI and DASTI at the Pescatore Restaurant in Montreal, Canada.

2. On or about the 10th day of January 1971, co-conspirator Catania and defendant MARTINEZ travelled by airplane from Dallas, Texas to John F. Kennedy International Airport, Queens, New York.

3. On or about the 10th day of January 1971, co-conspirator Catania delivered approximately nine (9) kilograms of cocaine to dedendant ODDO at the Hotel Riverside Plaza in New York, New York.

4. On or about the 12th day of January 1971, co-conspirator Catania delivered approximately Forty Three Thousand Dollars ($43,000) to defendant ASAF Y BALA in Mexico City, Mexico.

5. On or about the 22nd day of January 1971, defendant DASTI delivered a package to defendant ORSINI at Berke's Drug Store in Montreal, Canada.

(Title 21, United States Code, Sections 173 and 174.)

COUNT TWO

On or about the 10th day of January 1971, within the Eastern

District of New York, FRANK COTRONI, FRANK DASTI, GUIDO ORSINI, PAUL ODDO, JORGE ASAF Y BALA and CLAUDIO MARTINEZ, the defendants, wilfully, knowingly and unlawfully did receive, conceal and facilitate the transportation and concealment of approximately nine (9) kilograms of cocaine, a narcotic drug, after the narcotic drug had been imported and brought into the United States, knowing the same to have been imported and brought into the United States contrary to law.

(Title 21, United States Code, Sections 173 and 174; Title 18, United States Code, Section 2.)

A TRUE BILL.

FOREMAN

Robert A. Morse by TPP

ROBERT A. MORSE
United States Attorney
Eastern District of New York

REISCH, KLAR & LANE, P.C.
ATTORNEYS AT LAW

1501 FRANKLIN AVENUE
MINEOLA, NEW YORK 11501

516-742-4949

ERIC LANE
MICHAEL N. KLAR
RICHARD J. REISCH

RICHARD C. FIORETTI
MARK L. GROOTHUIS
ROSS RADLEY
RICHARD WOLLSTEIN

BURTON C. AGATA
COUNSEL

A 12

October 11, 1974

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
OCT 15 1974
TIME A.M.
P.M.

Thomas Puccio, Esq.
Assistant United States Attorney
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States of America v. Frank Dasti, et al
73 CR 898

Dear Mr. Puccio:

On June 6, 1974, request was made to examine your files in the above entitled matter and all other governmental agency files to determine whether this indictment or any evidence that will be offered at trial are the product of or are in any way related to information gathered from telephonic interceptions or interception by other electronic or mechanical means. In addition, request was made for a true copy of the order or orders designating such interception and all the supporting affidavits and exhibits, together with exact copies of the logs and exact transcripts of the interception.

Pursuant to our meeting shortly thereafter, you assured me that exact transcripts of the interception, together with the order designating such interception, would be made available to the undersigned. That such transcripts of the interception were being processed and would be made available to me at a time no later than your return from vacation.

Despite many telephone calls and correspondence directed to you, the material set forth hereinabove has not been furnished. Demand is now made that you furnish to the

COPY

(9)

undersigned forthwith all the information heretofore set forth in our letter dated June 6, 1974, a copy of which is annexed hereto.

Very truly yours,

REISCH, KLAR & LANE, P.C.

By_____
Michael N. Klar

MNK:md
enc.
cc: Hon. David G. Trager
Hon. Jacob Mishler
Max Fruchtman, Esq.

A 14

Max Fruchtman
Counselor at Law

250 West 57th Street
New York, N. Y. 10019

Plaza 7-4555

October 17, 1974

Thomas Puccio, Esq.
Assistant United States Attorney
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
★
OCT 29 1974
TIME A.M. .....
P.M. .....

Re: United States of America v. Paul Oddo, et al
73 CR 898

Dear Mr. Puccio:

On June 3, 1974 a letter was sent to you requesting that you examine your files to determine whether this indictment or any evidence that will be offered at trial were the products of or in anyway related to any information gathered from telephonic interceptions or interceptions by other electronic or mechanical means. A further request was made to you for a true copy of any order designating such interceptions and all supporting affidavits, exhibits, logs and exact transcripts of the interceptions.

A conversation with you resulted in an assurance that the exact transcripts of any interceptions together with the order or orders designating such interceptions and the supporting affidavits and exhibits would be made available.

I have called you on numerous occasions and have left messages with your secretary which you have failed to answer. These transcripts, orders and supporting affidavits are absolutely necessary to the defense of this action.

I, therefore, again request that you make these materials available to me as soon as possible.

Very truly yours,

MAX FRUCHTMAN

MF:ldx
cc: Hon. David G. Trager
Hon. Jacob Mishler
Michael Kiar, Esq.

(10)

A 15

ADDRESS REPLY TO
UNITED STATES ATTORNEY
AND REFER TO
INITIALS AND NUMBER

TPP:lag
F.#733,823

United States Department of Justice

UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK
FEDERAL BUILDING
BROOKLYN, N. Y. 11201

November 1, 1974

Moses Polakoff, Esq.
450 Park Avenue
New York, New York 10022

Max Fructman, Esq.
250 West 57th Street
New York, New York 10019

Michael Klar, Esq.
1501 Franklin Avenue
Mineola, New York 11501

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
NOV 1 1974
TIME A.M.
P.M.

Re: United States v. Frank Cotroni
Docket No. 73-CR-898

Gentlemen:

In accordance with our previous discussions, I hand you herewith a folder containing twenty seven items of discovery pertaining to the above-captioned case. The material I am turning over to you includes, among other things, documents producible pursuant to motion under Rule 16 of the Federal Rules of Criminal Procedure and under Title 18, U.S.C., Section 3500. Many of the items included have been selected by me with a view toward expediting the trial in this case and, you will note, are being produced at an earlier date than is required by statute.

A transcript of item 27, which is presently being prepared, has not been provided to you but will be available early next week. In addition, other exhibits which the Government will seek to introduce at the trial will also be available for your inspection next week. If there is anything further that you require in connection with this case, please contact me as soon as possible.

Very truly yours,

DAVID G. TRAGER
United States Attorney

By: Thomas P. Puccio
Thomas P. Puccio
Assistant U. S. Attorney
Chief, Criminal Division

30

cc: Clerk's Office
(Does not include Item 27)

A 16

United States Department of Justice

ADDRESS REPLY TO
UNITED STATES ATTORNEY
AND REFER TO
INITIALS AND NUMBER

TPP:lag

UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK
FEDERAL BUILDING
BROOKLYN, N. Y. 11201

November 8, 1974

Moses Polakoff, Esq.
450 Park Avenue
New York, New York 10022

Max Fructman, Esq.
250 West 57th Street
New York, New York 10019

Michael Klar, Esq.
1501 Franklin Avenue
Mineola, New York 11501

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
NOV 8 - 1974
TIME A.M.
P.M.

Re: United States v. Frank Cotroni
Criminal Docket No. 73-CR-898

Gentlemen:

Reference is made to my letter of November 1, 1974 (with attachments) and all previous discussions pertaining to the above-captioned case.

Submitted herewith is a folder containing additional items of discovery (numbered 28 to 42) which supplement the 27 numbered items delivered to you on November 1, 1974. Also enclosed is a copy of an opinion letter of L.-P. Landry, Q.C., Regional Director, Federal Department of Justice, and attorney for the Attorney General of Canada, indicating that the wiretap evidence which the Government will offer at the trial was lawfully obtained in Canada and would, if submitted to a court in Canada, be admissible evidence. Also enclosed for your convenience are copies of some of the authorities upon which Mr. Landry bases his opinion.

Judge Mishler has set the wiretap matter down for argument on November 11, 1974 at 4:00 P.M.

Reference is made to the enclosed item 33, which is a copy of the fingerprint record of Giuseppe Catania. Although the record indicates no prior arrest of Catania, it should be noted that Catania was arrested in Mexico City, Mexico on December 6, 1972 by Mexican Federal Police based upon information furnished to them by the United States Bureau of Narcotics and Dangerous Drugs regarding his narcotics trafficking. You should now be in possession of all 3500 material relating to the witness Catania.

(33)

In this connection you are advised that on November 1, 1974 Catania was interviewed in Washington, D.C., without prior notification to or approval of the United States Attorney's Office, by two members of the staff of the United States Senate Permanent Subcommittee on Investigations. Mr. Howard Feldman, Chief Counsel for the Subcommittee, has told me that no notes were taken by the staff members during the interview, but a tape recording of the interview was made. However, according to Mr. Feldman, since the interview was of no value to the Committee's inquiry, the tape upon which the recording had been made was re-used, thereby effecting an erasure of the recording of the interview. Mr. Feldman further stated that it is normal practice for the committee not to retain and preserve recordings for which they have no further use.

The enclosed items 28 to 32 are transcripts of telephone conversations in French between Frank Dasti and Frank Cotroni with a line-by-line translation. Transcripts of all other conversations (in English) which the Government intends to offer at the trial are presently being prepared and will be available on November 11, 1974.

If there is anything further that you require in connection with this case, please contact me as soon as possible.

Very truly yours,

DAVID G. TRAGER
United States Attorney

By: Thomas P. Puccio
Thomas P. Puccio
Assistant U. S. Attorney
Chief, Criminal Division

A 18

United States Department of Justice

ADDRESS REPLY TO
UNITED STATES ATTORNEY
AND REFER TO
INITIALS AND NUMBER

TPP:lag
F.#733,823

UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK
FEDERAL BUILDING
BROOKLYN, N. Y. 11201

November 20, 1974

Moses Polakoff, Esq.
450 Park Avenue
New York, New York 10022

Max Fructman, Esq.
250 West 57th Street
New York, New York 10019

Michael Klar, Esq.
1501 Franklin Avenue
Mineola, New York 11501

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
NOV 21 1974
TIME A.M.....
P.M.....

Re: United States v. Frank Cotroni
Criminal Docket No. 73-CR-898

Gentlemen:

Submitted herewith is a folder containing additional items of discovery (numbered 43 to 64) pertaining to the above-captioned case.

If there is anything further that you require in connection with this case, please contact me as soon as possible.

Very truly yours,

DAVID G. TRAGER
United States Attorney

By: Thomas P. Puccio
Thomas P. Puccio
Assistant U. S. Attorney
Chief, Criminal Division

(36)

Law Offices Of

BAMBURY, IANNUZZI, IANNUZZI, AND BAMBURY

Joseph A. Bambury (1925-1972)
Nicholas P. Iannuzzi (1930-1972)
John Nicholas Iannuzzi
J. James Bambury

233 Broadway - City of New York, 10007 - Barclay 7-9595

Cable Address: NUMERUNO, New York

Telex: 12 96 Iannuzzi - Attn: Frank Pisciotta Esq.

Telecopier: 1365 Queens Street West - Peter A. Gemmi

A 19

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
APR 14 1975
TIME A.M.
P.M.

Thomas Puccio, Esq.
Asst. United States Attorney
225 Cadman Plaza
Brooklyn, N.Y. 11201

Re: U.S.A. v. Cotroni

Dear Mr. Puccio:

Please be advised that I have this date filed a Substitution of Attorney on behalf of the above named defendant.

Pursuant to your letter to my co-counsel Mister Polakoff, dated November 20th, 1974, in which you indicated a desire to supply additional information in the above indicated case, if needed, please be advised that the following must be made available in order that a complete hearing as to the legality and propriety of certain electronic surveillance be conducted on November 29, 1974 and thereafter:

1) translations of all French language synopses (logs) supplied with the government discovery material

2) production at the hearing of all persons in the chain of custody of the original tapes, including but not limited to

   a) all persons who listened to the original tapes before destruction

   b) all persons who made, or assisted in making copy tapes of the original tapes

   c) all persons who had custody and access to the copy tapes

(39)

d) the register in which all persons who had access to the copy tapes registered their custody or use of the said tapes

e) all persons who actually installed the automatic tape recording equipment on each project

f) all persons who serviced the automatic tape recording equipment whether by adding, removing, changing tapes or the repair or change of the said automatic equipment

g) all persons who operated any and all equipment to which the tapes were subjected subsequent to being removed from the automatic tape recording equipment.

3) copies of all original tapes where available

4) where original tapes are not available information indicating why the same were destropyed; when the same were destroyed; how the same were destroyed and, by whom the same were destroyed

5) all copy tapes (dubs) made from original tapes on all VEGAS projects whether intended to be introduced at trial by the government or not

6) produce every automatic machine used in fact to record any or all of the original tapes on any or all of the VEGAS projects for the purpose of examination, testing and demonstration

7) produce all equipment used in creating the copy tapes, dubbing the copy tapes used for playback of original tapes for erasure or destruction of the original tapes of all VEGAS project tapes for the purpose of examination, testing and demonstration

*) product any and all existing transcripts any synopses of all orignal tapes on the VEGAS projects in addition to those intended by the government

A 21

for introduction at the trial hereof.

The foregoing may be supplemented by the request for additional information, documents, etc.

Very truly yours,

john nicholas iannuzzi

City of New York
November 27, 1974

A 22

Law Offices Of

BAMBURY, IANNUZZI, IANNUZZI, AND BAMBURY

Joseph A. Bambury (1925-1972)
Nicholas P. Iannuzzi (1930-1972)
John Nicholas Iannuzzi
J. James Bambury

233 Broadway - City of New York 10007 - Barclay 7-4595
Cable Address: NYMEK NO. New York

Klaus H. Von Lenne Ann Paul Marcantano
Lewis Hill Cohen Peter A. Gross

FILED
U.S. DISTRICT COURT
E.D.N.Y.
DEC 24 1975
P.M.

Thomas Puccio, Esq.
Asst. United States Attorney
225 Cadman Plaza
Brooklyn, New York

Re: U.S.A. v. Cotroni

Dear Mr. Puccio:

Although I wrote to you on the 27th of November, 1974 to indicate information or items for discovery and examination which I consider essential in order that a complete and proper hearing on the questions of legality, authenticity, and integrity of certain wire-tap evidence be had herein, to date I have not received any of the items requested, nor have I received any indication from you or your office as to when the same might be available.

Would you be kind enough to inform me as to when I might expect to have the items on the said list produced, particularly those items such as recording equipement used in the taping or copying of the tapes herein, so that these might be examined by experts; and in addition, when I might be able to have all the original tapes, and the copy tapes, so that these also might be listened to by experts.

In connection with the recording machines, please be advised that I would like all of the machines used in all the projects from which tapes are intended to be presented in evidence so that all these machines might be examined by electronic experts. As is obvious from other proceedings within recent time, even brand new machines when tested by experts indicate many flaws, imperfections, and malfunctions. Thus, it is necessary that the actual machines used in the various projects herein be examined.

Would you be kind enough further to have Agent Gallagher of the D.E.A. and Staff Sergeant Sauve (R.C.M.P.)

(44)

produced as witnesses so that the question of the United States Government's participation, its aiding, and abetting of the said investigation herein, can be explored.

When the above named two individuals are produced I shall appreciate all records, reports, memoranda, filed by the United States agent in connection with his participation in the investigation herein and any and all records available from the Canadian government so that these might be available for cross-examination purposes.

One further item relates to those records and documents which, during the hearing had on November 29, 1974, the defendant called for the production thereof. May I have those records and documents which the witnesses or yourself indicated would be made available.

May I hear from you at your earliest convenience, as I do not in any fashion wish to delay the hearings herein. However, it is absolutely essential that a complete and thorough hearing be had herein before a trial commences. I shall endeavor to cooperate with you and I shall appreciate your cooperation in this endeavor.

Very truly yours,

John nicholas Iannuzzi

John nicholas Iannuzzi

City of New York
December 5, 1974

A 24

United States Department of Justice

ADDRESS REPLY TO
UNITED STATES ATTORNEY
AND REFER TO
INITIALS AND NUMBER

DGT:TPP:lag
F.#733,823

UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK
FEDERAL BUILDING
BROOKLYN, N. Y. 11201

December 9, 1974

John Nicholas Iannuzzi, Esq.
233 Broadway
New York, New York 10007

Max Fructman, Esq.
250 West 57th Street
New York, New York 10019

Michael Klar, Esq.
1501 Franklin Avenue
Mineola, New York 11501

FILED
DEC 1974 *
P

Re: United States v. Frank Cotroni
Criminal Docket No. 73-CR-898

Gentlemen:

Enclosed is a folder containing supplemental discovery (Items 65 to 73) pertaining to the above-captioned case. You will note that the material now provided consists of summaries (logs) and transcripts of intercepted telephone conversations for nine so-called "Vegas projects" during December 1970 and January 1971. Translations of all summaries and transcripts pertinent to the above case have been provided. Summaries (logs) of intercepted telephone conversations which are not relevant to the case have not been translated and appear in the original french version. In addition, summaries of certain irrelevant conversations which the Canadian Government does not wish to make public at this time have been omitted from the discovery material and will be provided to the Court for in camera inspection.

If any defendant will seek to offer an alternate translation of any conversation or a translation of a conversation for which the Government has supplied no translation, notification should be given to the undersigned at least two weeks in advance of the date set for trial.

(46)

If there is anything further that you require in connection with this case, please contact me as soon as possible.

Very truly yours,

DAVID G. TRAGER
United States Attorney

By: Thomas P. Puccio
Thomas P. Puccio
Assistant U. S. Attorney
Chief, Criminal Division

Enclsoure (1)

Law Offices Of A 26

BAMBURY, IANNUZZI, IANNUZZI, AND BAMBURY

Joseph A. Bambury (1925-1972)
Nicholas P. Iannuzzi (1930-1972)
John Nicholas Iannuzzi
J. James Bambury

233 Broadway City of New York 7 - Barclay 7-9595
Cable Address: NOTARY New York

Roma 15 Via Tevere Avv. Prof. Mario Fiore
Toronto 180 Queen Street West Peter A. Grossi

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
APR 1 - 1975
TIME A.M.
P.M.

Hon. Jacob Mishler,
United States District Judge
Eastern District of New York
225 Cadman Plaza
Brooklyn, New York 11201

Re: U.S.A. v. Frank Cotroni
Index No. 73 Cr. 898

Honorable Sir:

Enclosed please find the following:

1. Opinion letter of Leo Rene Miranda, Esq., and appendices referred to therein relative to the legality of wire-tapping in Canada and in the Province of Quebec.

2. A Notice of Motion and motions on behalf of defendant Frank Cotroni.

A Memorandum in Support of such motions has been prepared and is being typed. However, I felt that Your Honor should have these motions as soon as possible and am therefore sending them on now. Copies of the Notice of Motion and motions have been filed with the Clerk of the Court and served on the United States Attorney.

We would appreciate Your Honor's assistance in getting some reply from our letter to the United States Attorney, dated November 27th and December 5th, 1974 copies of which are enclosed herewith, requesting certain information, etc. which we deem essential for our use at the hearings which are going on before Your Honor.

Respectfully,

johnnicholasiannuzzi

john nicholas iannuzzi

City of New York
December 10, 1974

enc.

cc: Thomas Puccio, Esq.

47

A 27

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

File No.:73 Cr. 868

v.

NOTICE OF MOTIONS AND MOTIONS

FRANK COTRONI, et al.

Defendant.

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
DEC 11 1974
TIME A.M.
P.M.

S I R :

PLEASE TAKE NOTICE that upon the annexed motions dated December 6, 1974, the indictment herein and upon all the proceedings heretofore had herein, motions will be made before the Hon. Jacob Mishler, the U. S. District Judge for the Eastern District of New York designated to sit on all matters in the above entitled instant case, at the U. S. Courthouse, Cadman Plaza, Brooklyn, N. Y., at such room number and at such time as the said Judge Mishler may determine:

1. For an order dismissing the indictment herein on the grounds set forth in the motions to dismiss the indictment attached to this notice of motions.

2. For an order pursuant to Rule 7(f) of the Rules of Criminal Prodedure directing the U. S. Attorney to furnish the defendant Frank Cotroni, so that he may properly prepare

(49)

his defense, may avoid surprise at the trial and may be protected against a second prosecution for the same alleged offense the particulars with respect to the indictment set forth in the motion for a bill of particulars attached to this notice of motions.

3. For an order pursuant to Rule 16 of the Rules of Criminal Procedure directing the U.S. Attorney to furnish the defendant Frank Cotroni for his inspection and copying or photographing documents and records and other evidence as more fully set forth in the motion for discovery and inspection attached to this notice of motions.

4. For an order requiring the U.S. Attorney to disclose to the defendant Frank Cotroni, any and all evidence which may be of assistance to the defense in connection with the instant criminal proceedings and the preparation of the defense thereto as set forth in the motion for such disclosure under the doctrine of Brady v. Maryland attached to this notice of motions.

5. For an order pursuant to Rule 14 of the Rules of Criminal Procedure severing for all purposes the defendant Frank Cotroni, from the other defendants named in the

indictment as set forth in the motion for severance attached to this notice of motions.

6. For an order pursuant to Rule 41(3) of the Rules of Criminal Procedure suppressing all evidence and/or the fruits thereof illegally secured from the defendant Frank Cotroni, or other defendants and/or which said defendant Frank Cotroni, has a right to supress under the constitution and laws of the U.S. and directing the return of any and all such evidence, as set forth in the Motion to Suppress and for the Return of Property attached to this notice of motions.

7. For an order pursuant to Rule 6(e) of the Rules of Criminal Procedure granting Frank Cotroni, the inspection of the Grand Jury minutes, exhibits and proceedings in the instant criminal proceedings as set forth in the motion for inspection of grand jury minutes, etc., attached to this notice of motions.

8. For an order pursuant to Rule 12(b)(4) of the Rules of Criminal Procedure directing that evidentiary hearings be held for the taking of evidence in aid of the foregoing motions as set forth in the motion for evidentiary hearings attached to this notice of motions.

9. For an order requiring the U.S. Attorney to furnish

the defendant Frank Cotroni, with a list of the names and addresses of the witnesses who testified or appeared before the Grand Jury which returned the instant indictment.

10. For an order requiring the U.S. Attorney and any and all agents and employees of the U.S. Government and/or any of its agents or employees to retain in his or their custody and possession any and all notes, memoranda, recordings and reports, original or otherwise, made by Assistant U.S. Attorney or any Agent of the U.S. in connection with his investigation and activities in the instant proceedings, including but not limited to the Attorney General of the U.S. and the Organized Crime and Racketeering Section of the U.S. Department of Justice, BNDD, DEA, etc.

11. An order requiring the U.S. Attorney to furnish the defendant Frank Cotroni, with any and all information known to the U.S. Attorney or that by the exercise of due diligence can be ascertained by the U.S. Government, of any promises, inducements or rewards of any kind or nature made to any witness or witnesses that the Government intends to rely on in support of the allegations contained in the instant indictment at any trial which might take place, together with the

the same information as to any witnesses who testified before the Grand Jury which returned the instant indictment; also any such promises or inducements which may have been made to induce any witnesses to refuse to testify or absent himself from the country, or otherwise prejudice the defense of this action.

12. An order requiring the U.S. Attorney to furnish the defendant Frank Cotroni, with copies of any statement or statements of the defendant Frank Cotroni, and/or other defendants, which said U.S. Attorney or any agency of the U.S. may have in its possession or control or may secure.

Granted

13. For an order requiring the U.S. Attorney to furnish the defendant with all the criminal records of each witness who testified on behalf of the United States in connection with the instant indictment before the Grand Jury or Juries or who is expected to be a witness at the trial of the instant indictment if one should take place.

Dated: December 6, 1974
Brooklyn, New York

Yours, etc.

john nicholas iannuzzi, Esq.
Attorney for Defendant
Frank Cotroni
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To: DAVID G. TRAGER, ESQ.
United States Attorney
Eastern District of New York
U.S. Courthouse
Cadman Plaza
Brooklyn, New York 11201

MOTIONS TO DISMISS INDICTMENT
AND IN AID THEREOF.

Method of Selection of the Grand Jury

The Method of Selection of the Grand Jury in the Eastern District of New York which returned the instant Indictment was illegal, violated due process and was contrary to the constitution of the United States. Among other improprieties in such selection was that the method employed resulted in the exclusion and/or illegal reduction in the number empanelled from certain ethnic and religious groups, and from persons between 18 and 21 years of age. The methods used being peculiarly within the knowledge of the United States Attorney, a full and detailed disclosure should be required in written form for examination and study by Defendant Frank Cotroni and his counsel.

MOTION TO DISMISS THE INDICTMENT

Use of illegally secured and perjured evidence before the Grand Jury.

The Defendant Frank Cotroni has reason to believe that there were one or more illegal searches of places where he was residing in Canada, the United States and elsewhere as well as bugging and the wire tapping, which has been admitted.

The Defendant Frank Cotroni has reason to believe that evidence known to the Government to be perjurious was presented to the Grand Jury.

One of the Motions in Aid of this Motion is for an Order requiring a full disclosure by the Government and its various agencies of all the facts which it is obvious are peculiarly within the knowledge of the Government.

In this connection Defendant Frank Cotroni specifically asks that statements under oath be required with respect to any and all searches and seizures, wire tapping, electronic surveilance, or other intrusions into the privacy or property of Defendant Frank Cotroni.

The credibility of the various Governmental Agencies has sunk to the point that only statements under oath will serve to protect a defendants rights.

MOTION TO DISMISS THE INDICTMENT

Lack of Specificity and failure to charge a crime.

The Indictment in this case is typical of all Federal Indictments being handed down under the present policy of the Department of Justice. That is to give the Defendant as little information as possible.

Reference is made to Rules of Criminal Procedure, Rule 7 (c):

> "Nature and Contents.
> (1) In General. The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged.***"

The Indictment in this case does not comply with this Rule.

Count One is vague and indefinite.

In Count Two the Government relies on Section 2 of Title 18, which is known as the aiding and abetting "Section". Nowhere is there any statement as to who the principal is and who the "aiders & abetters are." The law is clear that an aider and abetter can not be convicted without proof of the guilt of a principal.

It is clear that defects in the Indictment can not be cured by Bills of Particulars nor can it be amended.

The law is clearly spelled out in Russell v. United States, (1962) 369 U. S. 749 and in Ex Parte Bain, 121 U. S. 1 (1887).

MOTION TO DISMISS THE INDICTMENT

Failure of the Grand Jury to Vote the Specific Indictment.

The Government must submit proof that the Indictment in this case was actually presented to the Grand Jury and voted in haec verba. The practice which is normal in most cases is to have the Grand Jury deliberate and vote to indict or not. If an Indictment is voted, then the United States Attorney's office prepares the Indictment and the Foreman signs it. This practice is unconstitutional and is a definite violation of the Constitutional requirement that a criminal proceeding such as the instant one requires and indictment unless waived by the Defendant.

A complete discussion of this problem can be found in the case of Gaither v. United States, (1969) 413 F. 2d 1061 (D.C.)

The facts being peculiarly within the knowledge of the United States Attorney should be ordered disclosed.

MOTION TO DISMISS INDICTMENT

Impropriety in the Grand Jury Procedure.

The Rules of Criminal Procedure are clear as to exactly who is permitted in the Grand Jury Room and that no one may be present when the Grand Jury is deliberating.

Rule 6 (d) provides as follows:

> "(d) Who may be present. Attorneys for the Government, the witness under examination, interpreters when needed and, for the purpose of taking the evidence, a stenographer or operator of a recording devise may be present while the grand jury is in session, but no person other than the jurors may be present while the grand jury is deliberating or voting."

The presence of an unathorized person in the grand jury room raises a presumption of prejudice to the defendant.

> Lathan v. United States, (CCA 5, 1915) 226 Fed. 420, 424.
> United States v. Carper, (DCDC 1953) 116 F. Supp. 817, 820.
> United States v. Edgerton, (DC Mont. 1897) 80 Fed. 374.
> United States v. Powell, (DC Mo. 1948) 81 F. Supp. 288, 291.

On a Motion to dismiss the indictment for violation of Rule 6 (d), the guilt or innocence or the prejudice to the government which might arise from the dismissal is neither relevant or material.

United States v. Carper, supra.

The term "attorney for the government" is defined in Rule 54 (c) of the Rules of Criminal Procedure and this definition is controlling in the application of Rule 6 (d).

It does not include attorneys for the Federal Administrative Agency or a corporation owned by the Government.

See In re Grand Jury Proceedings, (CA 3, 1962) 309 F. 2d 440, 443.
United States v. General Electric Co. (DC Pa, 1962) 209 F. Supp. 197.

Due to the peculiar situation where only the Government knows exactly what happened, any suspicion of improper conduct requires a complete explanation or a dismissal.

Defendant Frank Cotroni is entitled to know who was in the Grand Jury Room, when and why.

MOTION FOR A BILL OF PARTICULARS

The following particulars should be covered by the order of this court, without prejudice to motions to dismiss the indictment and the furnishing of all such particulars is within the precedents approved by decisions of the Federal Courts, some of which will be cited herein.

COUNT ONE

1. State the exact time when it is claimed that defendant Frank Cotroni, became a party to the alleged conspiracy. United States v. Lopez, 26 F.R.D. 174 (S.D.N.Y., 1960)(McGohey, J.).

Denied

2. With respect to the other persons whose identities were known to the Grand Jury when it returned the indictment and any other person whose identity is presently known but was unknown at the time of the return of the indictment, the name and present address of each such person as called for by United States v. Kahaner, 203 F. Supp. 78 (S.D.N.Y., 1962)(Weinfeld, J.), together with the dates when it is claimed each and every such person became a party to said conspiracy and, if any left or abandoned the said conspiracy, the name or names of any such persons and the date or dates when such person left or abandoned

Granted

Denied

the said conspiracy.

3. State whether it is claimed it was part of the alleged combination, conspiracy, confederation and agreement to do those things and take those actions alleged in said indictment at the time it is alleged such combination, etc., commenced, and if the answer is in the negative, then the time giving the dates as exact as possible, when it is claimed the doing of the things and the taking of the actions became a part of the said combination, etc., and whether the said parts so alleged constitute all of the said combination, etc.; and, if not, then a detailed statement as to any and all other parts of said conspiracy.

4. State whether it is claimed that there was only one combination, conspiracy, etc., or whether there were separate and distinct combinations, conspiracies, etc., looking to or having as their object the violations of the laws referred to, and if it is claimed that there is more than one combination, etc., then the details with respect to each such combination, etc., including the names and dates involved in each such case.

AS TO THE OVERT ACTS NUMBERED 1 to 5 INCLUSIVE.

A. State whether the Government intends to prove or offer

evidence with respect to any overt acts or acts other than those enumerated, See, United States v. Covelli, 210 F. Supp. 589 (N.D., Ill, 1962)(Will, J.). If so, set forth the details, actions, names and addresses, places, conversations, etc. United States v. Kahaner, supra; United States v. Stromberg, 2 F.R.D. 513 (S.D.N.Y., 1957)(Palmieri, J.).

B. State whether any person or persons, other than those names, were present at or participated in any of the overt acts alleged and if so the name or names of person or persons and other details as requested similarly above.

C. State whether it is claimed that any conversation took place at any of the meetings or happenings alleged in the overt acts and if it is so claimed or if the Government has knowledge of information of any such conversation, then the details as to who said what, and to whom and the substance of each and every conversation.

MORE PARTICULARLY AND WITHOUT LIMITING THE FOREGOING

D. As to the overt act numbered 1, state the exact date when the defendant Frank Cotroni, is alleged to have met in Montreal, Canada, the time of day, the length of the said meeting and the time of arrival and departure of each person alleged to have been at the said meeting.

Denied

E. As to the overt act numbered 2, state the exact date, flight number and the time of departure and arrival.

F. As to the overt act numbered 3, state the exact date when such act is alleged to have occurred, the time of day, the length of the meeting at which such act occurred and the time of arrival and departure of each person alleged to have been present.

Denied

G. As to overt act numbered 4, state the exact date when such act is alleged to have occurred, the exact place, the time of day, the length of time involved, the time of arrival and departure of each person alleged to have been present.

H. As to the overt act numbered 5, the same information should be set forth and stated as requested with respect to overt act numbered 4, i.e., the exact date when such act is alleged to have occurred, the place where, the time of day, the length of the meeting at which such act occurred and the time of arrival and departure of each person alleged to have been present.

COUNT TWO

I. State the exact date, or dates when said act or acts are alleged to have occurred and in each instance the place where such alleged receipt, concealment, and transportation took place, the means or method of transportation and which one or more of the defendants participated therein and in what manner as to each; also where the said narcotic drug is alleged to have been imported from, by whom and its alleged destination in the United States; also who is claimed to have been the principal and who the aides and abetters in connection with the acts alleged in the said COUNT TWO.

MOTION FOR DISCOVERY AND INSPECTION WITHOUT PREJUDICE TO MOTIONS TO DISMISS INDICTMENT

The defendant Frank Cotroni moves for an Order pursuant to Rules 16, 17(c) and 6 of the Rules of Criminal Procedure directing the United States Attorney and any and all other government agencies or bureaus, including the Canadian collaborators to furnish defendant Frank Cotroni for inspection and copying the following books, papers and documents, tangible objects or copies or portions thereof which are in the custody or control of the government or the Canadian authorites and in addition permitting him to serve a subpoena duces tecum on the U.S. Attorney and any other governmental agencies or bureaus directing the production of any or all of the foregoing in his discretion at any evidentiary hearing in connection with his pre-trial motions:

a) All books, documents, records, letters, papers, recordings, checks, notes or any other tangible thing whatsoever obtained from or belonging to defendant Frank Cotroni and/or the other defendants or any copies thereof no matter from whom secured. U.S. v. Shindler, 24 F.R.D. 142, 145 n. 1. (S.D.N.Y., 1959, vanPelt Bryan, J.)

b) All notes, memoranda, papers, letters or other correspondence, recordings or notes of conversations whether telephonic or otherwise between Frank Cotroni and any of the other defendants and any agent or agents of any of the other defendant and/or any agent, relating to the subject matter of indictment.

c) All documents, letters, notes, memoranda, papers, other correspondence and notes or recordings of all conversations, telephonic or otherwise, between any of the defendants herein and any other defendant herein or between any of the defendants herein and any other person or persons relating to the subject matter of this indictment.

d) All statements, replies to questionaires or other information supplied to the U.S. Attorney, or any other government agency or Canadian collaborating officials or agents by any of the defendants herein or any person named as co-conspirator herein or any other person relating to the subject matter of the indictment.

e) Any and all reports, notes or other memorialization of electronic surveillance or other surveillance of the said defendant Frank Cotroni or bugging, monitoring or other interception of any telephone or other communication or activities

involving the defendant Frank Cotroni or his residence or residences, hotel rooms, etc. or any of the other defendants or any other person relating to the subject matter of the indictment.

MOTION TO BE FURNISHED WITH ALL
EVIDENCE FAVORABLE TO THE ACCUSED.

This motion is not to be confused with Jencks Act material, Under Brady v. Maryland Defendant Frank Cotroni asks that the Government furnish him with any and all evidence favorable to him within the Government's capacity to secure, that is, within the knowledge of the prosecuting officers or nay of the investigative agencies of the United States and Canada or secured during the pendency of all matters relating to this indictment. Such evidence should include but not be limited to: (1) any evidence that can be used for the purpose of impeaching the credibility of the Grand Jury Witnesses; (2) statements which would reasonably tend to show that the accused did not commit the offense charged; (3) statements which are inconsistent with statements made by parties other than the Defendant Frank Cotroni; (4) inconsistent statements made by a declarant to any Government or Canadian law enforcement officers and (5) prior inconsistent statements from those who testified before the Grand Jury or gave statements during the course of the investigation.

The Government is further called upon to disclose whether any of the defendants are expected to testify at the trial against defendant Frank Cotroni and if so what promises or inducements from the Government or others have been offered to or received by them; also whether any of the defendants have been offered or received any promises or inducements to plead guilty to the indictment or any Count thereof.

MOTION FOR A SEVERANCE WITHOUT PREJUDICE
TO MOTIONS TO DISMISS INDICTMENT

Defendant Frank Controni respectfully moves this court pursuant to Rule 14 of the Rules of Criminal Procedure for an Order severing him in all respects and for all purposes from the other defendants.

The grounds for this motion are among others that each and every one of the other defendants would be and are necessary witnesses in both any pre-trial proceeding and the trial in chief for the defendant Frank Cotroni.

The defendant Frank Cotroni is charged under Title 21, Sections 173 and 174 substantively with, and under Title 18, Section 2, of the U.S. Code, with aiding and abetting the other defendants in, commission of the crime of "willfully, knowingly and unlawfully" receiving, concealing and facilitating the transportation and concealment of approximately nine kilograms of cocaine, a narcotic drug, after the same had been imported and brought into the United States unlawfully.

In the event that the defendant Frank Cotroni and the other defendants are tried together it is unlikely that such defendants will testify for by so doing they will be putting

in issue their own credibility and character at the risk of their own liberty. On the other hand, if the defendant Frank Cotroni is tried independently and separately from the other defendants then there is every likelihood that they would be willing to testify on behalf of the defendant Frank Cotroni for in this situation the issue of their credibility and character cannot affect said other defendants adversely but only defendant Frank Cotroni.

The Defendant Frank Cotroni further moves for severance of the trial of each count of the indictment.

As the First Count of the Indictment is a conspiracy count the other defendants will be permitted to testify as to various conversations which ordinarily would be barred by the "hearsay" rule.

These conversations may and probably will be prejudicial to the defendant Frank Cotroni if he is tried jointly with the other defendants or if the two counts are tried together.

In other words we have here a conspiracy count joined with an aiding and abetting count.

The rules of evidence are entirely different.

No amount of instructions from the Trial Judge will be

sufficient to enable a juror to separate in his mind what evidence is available and admissable against a co-conspirator but is not available and must be put out of his mind in considering the guilt of an "aider and abetter." Bruton v. U.S., (1969) 391 U.S. 123, 99S. Ct. 1620, 20 L. Ed. 2D 476.

The prejudice to defendant Frank Cotroni is obvious for on the one hand the jury will be permitted to hear "hearsay" evidence which may very well implicate him on both counts. This "hearsay" evidence would clearly not be admissible if a separate trial were held on Count Two.

In all matters of this kind, Bruton has confirmed the constitutional guaranty of a fair trial. In cases such as this, this guaranty of fairness requires a separate trial.

There is no conceivable way the jury will be able to sort out and compartmentalize the charges in the Second Count after hearing evidence as to the First Count. Hence, as a matter of substanial justice, the court must follow Bruton and grant to defendant Frank Cotroni a severance in the premises.

The Government is called upon to disclose whether each and every defendant named in the instant indictment will be present for the trial and if no, why not.

MOTION TO SUPPRESS AND FOR RETURN OF PROPERTY

This motion is to seek the suppression and return of any and all property in the possession of the Government now or which may have been in its possession and alleged to be the property of Frank Cotroni, or any of his alleged agents, co-conspirators, or property in which any of such are alleged to have an interest and/or which may be in whole or in part used against said Frank Cotroni, in connection with the prosecution of these proceedings.

In view of all the circumstances and the fact that the Government may be the only one with knowledge of the property involved and its origin and its seizure, the Government should be required to disclose the relevant facts and other information involved.

The defendant Frank Cotroni, is informed and believes that the Government is in possession of property seized by agents of the United States or Canada which will be used in the prosecution against him in this case.

The defendant is further informed and believes that such property was illegally seized so far as defendant Frank Cotroni, is concerned.

The defendant is further informed and believes that other

property consisting of books, papers, documents, etc., were also seized and are or were in the possession of the Government of the United States, or Canada, or their agents.

The defendant is further informed and believes that there was electronic surveillance and bugging which was illegal and in violation of his rights and the results thereof are subject to this motion to suppress.

MOTION TO INSPECT GRAND JURY MINUTES, ETC.

In aid of the Motions to Dismiss, it is essential that Defendant Frank Cotroni and his counsel be given access to the entire Grand Jury Proceedings leading up to this Indictment.

There is a serious question of the quality of the evidence which was presented to the Grand Jury and whether it was tainted by illegal searches and seizures, wiretapping or electronic surveillance; also whether evidence perjurious to the knowledge of the Government was presented to the Grand Jury.

There is also the question of whether the Indictment was actually approved in haec verba as required by the Constitution as decided in the Gaither case above referred to.

There is also the question of who was in the Grand Jury room, when and why.

Under all of the circumstances, the Defendant Frank Cotroni has a clear and compelling need for such an examination.

MOTION FOR EVIDENTIARY HEARINGS, ETC.

Defendant Frank Cotroni submits that full evidentiary hearings pursuant to Rule 12(b)4 of the Rules of Criminal Procedure, will be required to resolve the issues of fact raised by the Motions to Dismiss the Indictment and that the only fair and reliable way to resolve these issues of fact is by taking the testimony of witnesses under oath.

Uncorrelated statements of Government Agents and Prosecutors have become so suspect in the light of some of the recent prosecutions nationally publicized that it is no longer fair process or due process to accept them for the full and complete truth.

It is obvious that in connection with any such Evidentiary Hearings the Defendant Frank Cotroni must have the full right of subpoena including subpoena duces tecum and therefore the Order granting the evidentiary hearing must include the right to serve subpoenas and /or subpoenas duces tecum under Rule 19(c) of the Rules of Criminal Procedure.

MOTION FOR LIST OF GRAND JURY WITNESSES, ETC.

In order to determine the propriety and regularity of the Grand Jury Proceedings the following is clearly required and only by securing the same can the Defendant Frank Cotroni properly present to the Court the relevant facts:

1. A list of the Grand Jurors who composed the Grand Jury which returned the instant Indictment and the names and addresses of each.

2. If any of such Grand Jurors has a Criminal Record, that should be disclosed together with such Record.

3. If there were any promises or inducements of any kind or character made to any Witness before the Grand Jury, this must be disclosed in order to determine whether the witness was bribed in violation of the laws of the United States, or unduly influenced or coerced and whether any perjurious testimony was presented to the Grand Jury with the knowledge of the Government.

4. In this same connection, Defendant Frank Cotroni is entitled to a list of Witnesses before the Grand Jury, with the names and addresses together with the criminal records of such witnesses if any,

A 57

MOTION REQUIRING PRESERVATION OF DOCUMENTS, ETC.

For some time now the Department of Justice has had a policy of destroying tapes, recordings, memoranda and other information which might be required in connection with a Defendant's defense activities, whether under the doctrine of Brady v. Maryland or the Jencks Act or otherwise.

It is vital that the Court Order all such material now in existence to be preserved in the event its production ever becomes required by the Defense.

A 58

MOTION REQUIRING DISCLOSURE OF PAYMENTS AND/OR INDUCEMENTS TO WITNESSES

While there should be and probably is a duty to disclose any payments to and/or other inducements to witnesses for the Government the defendant Frank Cotroni is entitled to a full disclosure with respect to the situation as to each and every witness and this Order should include each and every United States and/or Canadian Department or agent or agency so that later on there can be no question about waiver of the Defendants rights or lack of knowledge on the part of the Government prosecutors.

The Mele case and one or two others make quite clear the necessity for such an Order in view of the part misconduct of the prosecutorial and investigatorial agencies involved.

MOTION FOR STATEMENTS OF DEFENDANT COTRONI, ETC.

As a matter of course, Defendant Frank Cotroni is entitled to any statements which he may have made to the Government or any of its Agents, including Canadian agents or officials who may have collaborated with the Government or any of its agents, as well as any memoranda, notes or recordings of conversations or discussions between him and anyone else, including any and all government agents or employees, etc. This is true whether such statements were secured with or without his knowledge.

In view of the aiding and abetting character of Count Two, Defendant Frank Cotroni is also entitled to the same material with respect to the other defendants in the Indictment.

A 60

MOTION FOR CRIMINIAL RECORDS OF WITNESSES

The practice of the prosecution normally is to disclose such information only if requested at the time of the delivery of the 3500 or Jencks Act material.

Such practice is obviously unfair to the Defense, as it is impossible to check out such information during the trial with out asking for time which the Trial Judges normally deny to the prejudice of the Defense.

Defendant submits that in this case in particular the Government should be required to make such disclosure now.

Léo René Maranda
AVOCAT · BARRISTER

A 61

3500, RUE ST-HUBERT
MONTRÉAL 132
842-5871-2

Montréal, November 28th., 1974

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FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
APR 14 1975
TIME A.M.....
P.M.....

Re: FRANK COTRONI
FRANK DASTI

Gentlemen,

Pursuant to your request please find herein my opinion on the legality of wire tapping in Canada prior to the coming into force, on June 30th 1974, of PART IV 1 (Sections 178, 1 to 178.23 inc.) of the CRIMINAL CODE which regulates the process of interceptions of private communications and sets the rules of procedure whereby evidence so obtained may be admitted before our Courts.

I have had the privilege of reading the opinion of Mr. L.P. Landry a representative of the Attorney-General of Canada who prosecuted Mr. Cotroni's extradition to your country. Mr. Landry is also one of the counsels of the Royal Canadian Mounted Police, our Federal Police force, and has for some years directed prosecutions on its behalf in the judicial District of Montreal.

Reading Mr. Landry's opinion I could not help thinking it strange that he, even in cases of the utmost importance, involving complex conspiracies, has never tried, prior to July first of this year, to introduce into evidence telephone conversations that were "tapped".

(40)

A 62

Even this year, in a case pertaining to an involved conspiracy to traffic in narcotics, attorneys for the Attorney-General of Canada and the R.C.M.P. produced in Court tapes recorded over a period of several days of conversations taking place in a motel room between several accused. From the tapes obtained by placing microphones in this room, it was obvious that members of the conspiracy had made several phone calls as their side of the conversation could be plainty heard. However, the equally important other side of the conversation was never introduced in evidence and no attemps were made to do so. Cross-examination of the R.C.M.P. officers by defense attorneys could not bring forth any admission by them that wire-tapping had been used. In this case, bearing No 4921-72 of the records of the Peace and Crown Office of Montreal, the trial of MANDOLIA, FECORETTA & BALSAMO is not yet concluded.

In my seventeen years before the Courts in Montreal and after reading thousands of reported cases, I can state that I am not aware of a SINGLE instance where the R.C.M.P., the police corps Mr. Landry is the attorney for, has admitted to eavesdropping on a telephone conversation without the consent of one of the parties thereto.

It is respectfully suggested that Mr. Landry be challenged to quote <u>one</u> case where the police force he is counsel of has tendered in evidence a private telephone conversation that was intercepted, prior to June 30th 1974, without the knowledge and consent of at least one of the interlocutors.

Either the R.C.M.P. has not indulged in the practice or has been loath to admit that it did; and, being certainly one of our most competent and progressive police corps, it certainly would have resorted to wire tapping and freely used the evidence so procured had it not been for the fact that it was illegal.

When I say that wiretapping without the consent of one of the parties to the conversation is illegal, I must qualify that broad statement and add "in most circumstances".

In 1971 existed and still exist the following statutes:

(1) An Act to incorporate The Bell Telephone Company of Canada, 1880 (Statutes of Canada), ch.67, sec.25 (quoted at pp 399-400 in the Re Copeland & Adamson case, a photocopy of which is annexed to Mr. Landry's opinion.)

(2) The Criminal Code of Canada, Sections 287, 387, 423;

(3) The Quebec Telegraph & Telephone Companies Act (Revised Statutes of Quebec 1970, c 286 sections 23 and 24)

(4) The Civil Code of the Province of Quebec, Section 1612

Photocopies of the pertinent sections of these various Statutes are annexed under APPENDIX I .

So although there was, up to June 30th of this year, no Law of Canada outlawing wiretapping as such, the actions relating thereto would be illegal inasmuch as they contravened any of these statutes and there existed no lawful or valid authority or excuse for such violations.

It is respectfully suggested that self-authorization by police officers no matter how high their rank is void in the absence of any Law conferring upon them the power to grant such authorization.

It is further suggested with deference that a "consensus" or meeting of minds purporting to grant authority to do unlawful acts is simply a conspiracy to defeat the Law and cannot constitute lawful authority or excuse for breaches of the Law of the land.

If the "Provincial Minister of Justice" (referred to in our Criminal Code as the "Attorney-General of the Province") whose duty and prerogative it is to administer in the Province the "Criminal Law" as it IS (Power to create Criminal Law being vested unto the Federal Government - B.N.A. Act, section 91- (27) took it upon himself to authorize police officers in the Province to murder all arsonists, such police officers would still be murderers as he would himself be. If such authority was granted as a result of a "consensus" of high-ranking police officers, participants in the "consensus" would be guilty of a conspiracy to murder.

My contention is that prior to June 30th 1974 there existed in this Country no legislation providing for the "lawful authority" to install a wiretap.

The new Law (Sections 178.1 to 178.23 of the Criminal Code) provides for judicial authorization. The statute gives certain judges, under certain circumstances power to authorize interception of private communications.

Before that, the same judges, although they were empowered to issue search warrants, had no authority to grant authorization to set up electronic surveillance over telephone wires, A case in point is:

(1) Re BELL TELEPHONE CO. OF CANADA 89 CCC 196

A copy of this decision is annexed hereto, under APPENDIX II -

Can it be seriously argued that mere police officers who themselves have to go to the judiciary for authorization to execute a search warrant can authorize themselves to do which the judges are powerless to allow? In the absence of clear legislation to that effect, obviously not.

In 1965 Parliament established "The Canadian Committee on Corrections" and on March 31st 1969, the Committee, known as "the Ouimet Commission", turned in its report to the Government; the Queen's Printer published the report under the following title and sub-title -

" REPORT OF THE CANADIAN COMMITTEE ON CORRECTIONS

Toward Unity:

Criminal Justice and Corrections "

It is apparent that, in 1969, the Ouimet Commission was as unaware as I am of any legal provisions purporting to authorize police officers to listen in on private telephone conversations or purporting to empower anyone to so authorize them.

Otherwise, the report would not, at page 85, have stated that:

" The Committee is of the view that wiretapping and electronic eavesdropping for law enforcement purposes under conditions of strict control should be authorized by legislation."

Between then and now - the ONLY FEDERAL legislation on the subject is the amendment to the Criminal Code, creating PART IV.1 and its Sections 178.1 to 178.23 inc. a copy of which is included in APPENDIX II .

As regards Provincial legislation, the first POLICE ACT ever introduced in the Province of Quebec came into force on June 21st 1968. It does not contain any provision conferring unto any Provincial Government Official, Police Officer or other the right to wiretap or the authority to allow or use wiretapping and it does not set forth any procedure by which such authority could be given or received.

I fail to see how, under the circumstances, any one can claim that "the officers did consult the "proper superior officers of the Quebec Provincial Police", there being no Law, Statute, Order, Rule or Regulation in existence establishing, describing or otherwise indicating who are the "proper superior officers". Consequently it is beyond me that one should be able to state that these officers "did obtain an authorization from such officers" when precesily there are no such officers and when the authorization has no more validity than if it came from myself or any other citizen who was not a party to the conversation and who had no right to the particular telephone lines being monitored.

Our further contention on the subject is that if such Provincial Law, Statute, Order, Rule or Regulation existed it would be "ultra-vires" of the Provincial Legislatures.

If I may again quote the Ouimet Commission whose report states at page 82: "It would appear that it is doubtful whether provincial legislation could CONSTITUTIONALLY control conduct of law enforcement officers in the investigation of criminal offenses. Federal legislation is therefore desirable".

It is my firm and sincere belief that only Parliament has the power to enact exceptions to its criminal Law and that it is not in the realm of Provincial legislation to allow breaches of a Law applicable all over Canada equally in each and every one of the country's Provinces and Territories. For example, section 178.2 (2) creates exceptions to the offence set forth in paragraphe (1) and the Provinces are powerless to add a subparagraph (f) to the exemptions provided for by the Code.

My humble opinion is that these acts by police officers could not be said to have been lawful as they were not done under the authority of or in compliance or accordance with any law.

Indeed it is my opinion that they were done contrary to Law and where therefore unlawful and illegal.

I draw your attention to subsection (2) of Section 423, which reads thus:

(2) Every one who conspires with any one

a) to effect an unlawful purpose, or
b) to effect a lawful purpose by unlawful means,

is guilty of an indictable offense and is liable to imprisonment for two years.

It is respectfully submitted

that "every one and any one" include police officers regardless of rank and provincial officials including the Attorney-General;

that "unlawfull purpose "in view of the existence of paragraph (1) and especially of its sub-paragraph (d) means anything that is contrary to Law and does not constitute an indictable offence;

that which it is an offence to do cannot be said to be lawful;

that an agreement to violate section 25 of the Act to Incorporate the Bell Telephone Company of Canada is a conspiracy to effect an unlawful purpose, such a purpose being one to commit a criminal infraction to wit "a misdemeanor" (with due respect. His Honor Judge Martin who rendered the judgment in the Lesarge case quoted by Mr. Landry is one of the probably very few members of the legal profession in this country, in England and in the United States who will argue that the word "misdemeanor" does not describe a criminal infraction or offence.)

that, likewise an agreement in the Province of Quebec to contravene within the territorial limits of the Province a law of the said Province, is a conspiracy to effect an unlawful purpose;

that a contravention to section 24 of the Quebec Telegraph and Telephone Act is a breach of such a Law and entails the commission of a Penal offence;

that therefore the agreement to authorize wiretapping and to wiretap was a conspiracy to effect an unlawful purpose.

The Ontario Court of Appeal whose decisions are binding on the Ontario High Court of Justice and on Mr. Justice Grant has, some eight months after the learned judge rendered his judgment in Re: Copeland and Adamson (also quoted by Mr Landry) affirmed the conviction of an Ontario police officer and another man for conspiracy to effect an unlawful purpose, contrary to section 423 (2) (a) of the Criminal Code. The two men had been wiretapping and in this case the unlawful purpose was a breach of Section 112 of The Telephone Act (RSO 1970, c. 457), a Law of the Province of Ontario. This case is reported as:

R v CHAPMAN & GRANGE 20 C R N S 141

and a copy of the report is annexed in APPENDIX II .

On page 152 of the report of the judgment at trial the learned judge quotes Section 112 of the Ontario Telephone Act.

Comparison with Section 24 of The Quebec Telegraph & Telephone Act, shows the two statutes to be practically identical, the Quebec one being slightly broader in its scope to include the simple fact of listening to a telephone conversation not addressed to or intended for the listener.

To my knowledge this is the only judgment by a Canadian Court of Appeal on the question of the legality of wiretapping.

It will be noted that the Honorable Court of Appeal has stated having considered that the only unlawful purpose contemplated by the charge as laid was an infraction to the Provincial Telephone Act.

Therefore the only judgment pertaining to the interpretation of the word "interception" as used in the Bell Telephone Act, section 25, that His Honor Judge Martin had to contend with in the Lesarge case was that of Mr Justice Rand in Re Copeland and Adamson.

I feel the definition accepted by Mr Justice Rand is too narrow, even archaic. Theft in its general sense includes as an essential ingredient that a person be deprived of what is taken by the thief. In modern times some offences describe thefts that do not include this notion. Theft of electricity or telecommunications as described in Section 287 of our Criminal Code is an example of this.

Before the event of telecommunications interceptions had to be physical as that which could be intercepted was tangible. Short of inventing a new word to suit the circumstances of the operation of these then new devices, the old word which was best suited to describe the situation had to be used. The message was "taken in passing" without the receiver being deprived of it. And because of the nature of the transmission the sense of the word had to be extended to cover the new situation. This extension of the primary meaning of the word has been widely accepted to fill the gap between the old and new states of facts. At present there is no other word to describe so aptly the consequence of wiretapping.

In the United-States, if the Omnibus Act is to have any meaning at all, the word "interception" cannot be interpreted in its former narrow meaning, it has to be in the extended sense that only can correspond to reality in relation to telecommunications. The same can be said of The Telephonic Communications (Interception) Act of 1960 in Australia.

It is therefore respectfully submitted that the interception described in Section 25 of our Federal Act does not mean merely the fact of preventing the message from reaching its destination but also to make it reach another destination than the one intended without the recipient being deprived of it.

Wherefore it is urged with deference that proper construction of the Bell Telephone Act and of section 423 - (2) - (a) of the Code results in there being a second conspiracy to effect an unlawful purpos, to wit, an infraction against Section 25 of the Act to Incorporate the Bell Telephone Company of Canada.

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Should it be countered that the purpose of the police is lawful, their primary objective being the gattering of evidence in view of a criminal prosecution, then their actions would still fall under sub paragraph (b) of paragraph (2) of Section 423; "to effect a lawful purpose by unlawful means", the means being those prohibited by the aforesaid Quebec Statute and Federal Statute relating to telephones. The means also being against constitutionnal guarantees that have always been those of the citizens of this Country and have been reaffirmed by the Canadian Bill of Rights, section (1) (a). (see APPENDIX I).

It is also my opinion that the agreement reached between police officers to authorize themselves to tap private telephones of citizens was a conspiracy to steal communications contrary to Section 287 of the Code and that they were committing thereby a criminal act against section 423-1-(d) of the Code (see APPENDIX I).

Section 287 used to be Section 273, Up to 1960 the wording restricted the offence to fraudulently or maliciously using a telephone or telegraph line or obtaining service.

Still bearing the same number the Section was amended so its scope would be wider as will be shown by comparison of the two sections, both being reproduced on successive pages of APPENDIX I .

The most important change is the addition to the alternative essential elements which make it a crime to use such wire or cable; to maliciously or fraudulently has been added a third situation: "or without colour of right."

While the first two were questions of positive intentions the new element is purely a question of fact. If there is no colour of right into the wire or cable, the use of it or the obtention of service by the user makes him guilty of a crime. An agreement to commit the crime or to have it committed by one of the conspirators or a third party is a conspiracy and itself a further criminal offence, separate and distinct of the offense provided for by Section 287.

Furthermore,in view of section 387 of the Criminal Code, more especially,its subsections (1) sub-paragraphs (a) and (c), (4) and (5), wiretapping under some circumstances could constitute a criminal mischief in relation to private property, a criminal act,being an indictable offence punishable by imprisonment for five years.

It could be mischief under sec. 387-(1)-(a) if the Bell Telephone equipment is damaged to even the slightest degree in the process of installation of the wiretap;cutting wires,stripping them of theirs protective covering,burning switches etc...and it could also be an infraction against subsection (5) of 387.

By the way this could also be interpreted as "injuring or molesting" lines which also contravenes section 25 of the act to incorporate The Bell Telephone Company of Canada.

In the event that a subscriber leases a "private"line and pays the higher tariff incurredd the lawful enjoyment of this property guarantees him privacy;depriving him of the privacy he pays for is interfering with the lawful enjoyment of his "private" telephone line. This is mischief under subsection (1) subparagraph(c) and /or is at any rate a willful act likely to constitute mischief in relation to private property,contrary to 387 (5).

It is to be noted that the Canadian Bill of Rights,Part I, Section 1-(a) recognizes the existence in Canada of the right of the individual to the enjoyment of property and the right not to be deprived thereof except by due process of law.

Under art.1612 of the Quebec Civil Code the lessor,in this case The Bell Telephone has the obligation to give "peacable enjoyment"of the thing leased;to wit a "private line" and not a "party"line. If the lessee cannot enjoy the property in the way he pays for,he is not getting "peacable enjoyment" of it.

A conspiracy to interfere with the lawful use,enjoyment or operation of property and to damage property in pursuance of this end or to do acts that are likely to constitute mischief in relation to private property is a conspiracy to commit an indictable offence punishable by imprisonment for five years and itself is an indictable offence punishable by five years.

In conclusion on this subject,although there is no law saying in so many words that wiretapping is illegal,its practice would almost always involve a direct breach of one statute or another and,when two or more persons agree to concern themselves with it there would be a common law conspiracy to effect an unlawful purpose or to effect a lawful purpose by unlawful means and also a conspiracy to commit an indictable offence contrary to section 287 or to section 387.

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A trial on an indictment charging the accused with such breaches of statutes or such conspiracies is the only true test of the meaning of the law involved.

As previously pointed out, R v Chapman & Grange is the only such trial reported and the judment of the Court of original jurisdiction supports our point of view as far as the Federal and Provincial "Telephone Acts" are concerned. Although not interpreting specifically the word "intercept" it does find that the actions of the wiretappers were contrary to section 25 of the Federal act and it follows that the tribunal did find them to be "interceptions" TheOntario Court of Appeal considered the indictment to be in relation to the Provincial Act and therefore did not comment on the lower Court's findings on The Federal Act and no conclusion may be drawn from that.

It is respectfully submitted that the cases quoted by Mr Landry cannot be cited as authorities on the subject as they deal primarily with the admissibility of evidence and are therefore "obiter dicta" as to whether said evidence was legally obtained or not.

In the "Re: Copeland and Adamson " case,the learned judge's dissertation on the legality of wiretapping had no bearing on the decision;the crux of the matter was that the petitioner had no status before the Court. If the Court was right in this respect the decision was unimpeachable and the judge could air his views on the subject with all the finality of the Supreme Court.

In our country,as in England,Courts,unless forced by a special statute,are not concerned with how evidence is obtained. A police officer could resort to murder to obtain evidence and if the evidence is relevant i t will be admitted.

It follows that little consideration is given to the legality of the means whereby evidence is obtainedd and when the question is considered it may not and cannot influence the decision as to admissibility; it therefore cannot be a ground of appeal.

An example of this in England is:

KURUMA, SON OF KANIU, v R

(1955) A.C. 197, (1955) 2 W.L.R. 223
(a decision of the Judicial Committee of the Privy Council,the Highest Court in the British Empire), the digest of the case in the Criminal Law Review of june 1955 is to be found in appendix II .

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The Supreme Court of Canada has adopted a similar position in:

ATTORNEY GENERAL OF QUEBEC v BEGIN,(1955)SCR 593,21 C.R.217

Photocopy of the judgment in resume form is also included in APPENDIX II.

In view of the foregoing it seems obvious that if the learned judges had come to the conclusion that the gathering ofthe evidence had been done illegally they would have nevertheless admitted it if relevant and not breaking any other rules;therefore their reasonings and conclusions on the subject were not material to the disposition of the case.

However in the cases of Lesarge and of Desjardins & Sureault, due to the fact that these cases were posterior to the new enactment, it is possible that the outcome would have been different if the learned judges' interpretation of 178.16 had been to the effect that the new subsection was applicable to all cases and created an exception to the general rule.If they had interpreted the new enactment as affecting all intercepted communications of a private nature and applied the words "lawfully made " to said interceptions at the time that they were made and considered that these words indicated an intent by the legislator to create an exception to the rule as expressed in "BEGIN" and in "KURUMA",then their appreciation of the legality of wiretapping prior to June 30th 1974 would have been material to the decision on the admissibility of the evidence.

As such was not the case nothing can be gained by discussing their interpretation of Setion 178.16 and my reasons for thinking, with respect,that they have reached the wrong conclusion in applying the general rule;suffices to say that once they decided to revert to it,whatever was said as to the legality of wiretapping was immaterial.

The Desjardins & Sureault case ended with a locked jury so the Honourable Bisson's opinion cannot be verified by a Court of Appeal;as of this writing I have been unable to ascertain what was the outcome of the Lesarge trial.

As there might some question as to the identity of the Canadian Courts whose judgments were cited I have included in APPENDIX I a photocopy of the pertinent sections of Section 2 of the Criminal Code defining "Court of Appeal","Superior Court of Criminal Jurisdiction" and "Court of Criminal Jurisdiction.

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It might also be useful to know that the Supreme Court of Canada now is our court of last resort as appeals from that court to the Judicial Committee of the Privy Council have been abolished.

There remains one question, that of the "de facto" admissibility of tapes that are theoretically admissible.

As far as theoretical admissibility is concerned the criteria vary widely between your Country and ours; Canadian Courts having always disregarded the question of the legality of the means whereby evidence was obtained; but once the question is settled in theory it would appear that for the next step, the question of pratical admissibility, the process is more similar; in Canada the whole question resides there.

A perusal of all the judgments filed either by Mr Landry or the undersigned and of all the cases referred to in these decisions reveals that in Canada, before taped conversations are introduced into the record, a "voir-dire" is held by the judge in the absence of the Jury.

The purpose of this "voir-dire" is to establish:

A) The authenticity of the tapes;
B) The integrity of the tapes;
C) The identity of the parties to the conversation;
D) The true existence of the conversation;

And if the above is established AND the evidence is relevant AND the rules of admissibility <u>do not operate unfairly</u> against the accused the tapes would be admitted.

Here the accused is entitled to the benefit of the doubt at every stage of the proceedings and "voir-dire" being a trial within the trial, the rule applies to it. This evidence is also subject to the "best evidence" rule and there are no known instances of copies of tapes being filed without the originals having been offerred to the defence for inspection, comparison and scientific examination. The same can be said of deleted portions of a conversation where the deleted part has not been made available to the defence.

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APPENDIX II

AUTHORITIES RELIED ON

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APPENDIX II

Re: BELL TELEPHONE CO. OF CANADA 59 CCC 196

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RE BELL TELEPHONE COMPANY OF CANADA.

Ontario High Court, McRuer C.J.H.C. June 6, 1947.

Search & Seizure II A—Premises suspected of being gaming house—Issue of search warrant to enable "tapping" of telephone wires—Purpose of a search warrant—

The purpose of a search warrant, for which provision is made by s. 629 of the *Cr. Code*, is to secure things that will afford evidence of the commission of an alleged offence, either in themselves or in relation to other things. A search warrant cannot, however, be utilized to secure an opportunity of making observations in respect of the use of things in order thereby to obtain evidence. Thus, where certain premises were suspected of being used for betting purposes and a search warrant was issued authorizing entry into a telephone exchange and the conduits and manholes of the telephone company (i.e. "wire tapping"), to search, *inter alia*, for the telephone wires and related telephone apparatus connecting the suspected premises with the exchange, *held*, the search warrant must be quashed. *Held*, further, the information leading to the search warrant did not indicate that the informant had reasonable grounds for believing that the wires and apparatus would in themselves afford evidence of the commission of any offence.

Quaere whether apparatus such as telephone equipment, affixed to realty, can be seized under a search warrant.

Statutes Considered: *Cr. Code*, s. 629.

APPLICATION to quash a search warrant.

N. A. Munnoch, K.C., and *F. A. Burgess*, for applicant, Bell Telephone Co.

W. B. Common, K.C., and *F. W. Fisher*, for the Crown.

MCRUER C.J.H.C. (oral):—This is an application to quash a search warrant issued by J. Rennicks, a Justice of the Peace in and for the City of Toronto, on information laid by one James Hawton, authorizing and requiring the Peace Officers of the

City of Toronto to enter into the premises situate in the City of Toronto and known as the Waverley Exchange of the Bell Telephone Company of Canada at 76 Adelaide St. West, and into conduits and manholes belonging to the Bell Telephone Co. and located on and under certain public streets, to search for certain things named in the search warrant and to bring them before the Justice.

The things named are divided into two classes: "(a) Records, contracts, billings and memoranda of local, zone and long distance telephone calls during the six months ending the twelfth day of May, 1947, and other documents relating to the telephone line or lines installed in the premises at 217 Church Street in the City of Toronto, and in such other premises wherein telephone service is furnished by The Bell Telephone Company of Canada which are communicated with by means of the telephone in the premises 217 Church Street aforesaid;" and "(b) The pair or pairs of telephone wires and related telephone apparatus connecting the telephone or telephones in the premises 217 Church Street in the City of Toronto with the Waverley Exchange of The Bell Telephone Company of Canada to and including the terminals of the said line or lines in the terminal strip mounted on the vertical side of the intermediate distributing centre in the said Waverley Exchange."

The search warrant and the information are attacked on several grounds, and in some respects the information is questionable in form, but I do not wish to deal with this motion on any narrow technical ground that could be cured by a new information and a new warrant.

The case as brought before me, is amplified by an agreed statement of facts which is of assistance in disposing of the legal questions involved.

As there is no common law authority for what is sought to be done in this case, the authority must be found in the relevant statute. Section 629 of the *Cr. Code* provides, among other things, that:

"Any justice who is satisfied by information upon oath in form 1, that there is reasonable ground for believing that there is in any building, receptacle or place, (*a*) anything upon or in respect of which any offence against this Act has been or is suspected to have been committed; (*b*) anything which there is

reasonable ground to believe will afford evidence as to the commission of any such offence; or (c) anything which there is reasonable ground to believe is intended to be used for the purpose of committing any offence against the person for which the offender may be arrested without warrant; may at any time issue a warrant under his hand authorizing some constable or other person named therein to search such building, receptacle or place, for any such thing, and to seize and carry it before the justice issuing the warrant, or some other justice for the same territorial division to be by him dealt with according to law."

Section 630 provides for the execution of the warrant, and s. 631 for the manner in which the things seized are to be dealt with following the execution of the warrant. The duty of the constable is to seize the designated things and bring them before the Justice who may detain them, taking reasonable care to preserve them until the conclusion of the investigation, and if anyone is committed for trial he may order such things to be further detained for the purpose of evidence on the trial. If no one is committed for trial the Justice shall direct the things to be restored to the person from whom they are taken, except in certain cases that are not relevant to this case.

As I view it, the object and purpose of these sections is to assist the administration of justice by enabling the constable or other properly designated person to go upon the premises indicated for the purpose of procuring things that will in some degree afford evidence of the commission of an alleged crime. It is not necessary that the thing in itself should be evidence of the crime, but it must be something either taken by itself or in relation to other things, that could be reasonably believed to be evidence of the commission of the crime.

Before a Justice may issue a search warrant, it is necessary that there be a sworn information that contains such a statement of facts as satisfies the Justice that there are reasonable grounds for believing any of the things set out in s. 629. It is not sufficient that the Justice should be satisfied—he must be satisfied on reasonable grounds; that is, the grounds of belief set out in the information must be such as would satisfy a reasonable man. If there are not such grounds shown the Justice cannot be taken to have been satisfied on reasonable grounds.

The information in this case, taken on its face, does not in-

dicate that the informant had reasonable grounds for believing, or did believe, that the things mentioned in para. (b) of the search warrant, as above set out, would in themselves afford evidence of the commission of any offence, or that they were in themselves anything upon, or in respect of which, an offence against the Act had been committed.

Mr. Common argued the case on behalf of the Crown very frankly and stated, with respect to those things mentioned in para. (b), that it was not hoped to prove the commission of any offence by their production in Court, but that the desire was that an officer should have the authority to go on the premises to seize them, and there observe the use being made of the things in place, as part of the equipment of the Bell Telephone Co. It is suggested that by this observation the officer would be able to secure further evidence that would be valuable in the prosecution of the alleged offence. The form of the information, on its face, indicates that this was the purpose and the belief of the informant who laid the information, as distinct from a belief that the things sought were things which come within s. 629 of the *Cr. Code*. The last paragraph but one reads as follows:

"And this informant further says that he has reasonable ground for believing and that he does believe that the hereinbefore mentioned things or some part of them are in the building, receptacle or place situate and known as the Waverley Exchange of The Bell Telephone Company of Canada at 76 Adelaide Street West and/or in conduits and manholes belonging to The Bell Telephone Company of Canada located under certain public streets in the City of Toronto or on poles belonging to The Bell Telephone Company of Canada located on certain public streets in the City of Toronto, and *will if left in place and functioning and their operations observed afford evidence as to the commission of the said offences*, and that the grounds of his said belief are that the said telephone lines, apparatus, wiring and equipment and the said records, contracts, billings, memoranda and documents on the said premises of The Bell Telephone Company of Canada will establish that the said premises 217 Church Street in the City of Toronto where bets are taken from the public is in communication with one or more other common betting houses where the said bets are recorded." (The italics are mine.)

In another respect, the form of the information indicates that the informant is carefully avoiding being taken to suggest that these things referred to in para. (b), (as distinct from records, etc. referred to in para. (a)), would afford evidence of the commission of any offence. This is shown by the use of the words on the first page of the information, as follows: "are being sought in connection with the following offences which this informant believes have been committed within six months", etc. Here the informant, in referring to the things to be searched for, states that they are merely things being sought "in connection with" the offence, which, if left in place and observed functioning, will afford evidence. The *Cr. Code* makes no provision for seizing things "in connection with" offences for the purpose of observation in place. The words of the *Cr. Code* above set out must be strictly construed. They contemplate the issue of a warrant for the purpose of bringing the things that may afford evidence in the case before the Justice as soon as may reasonably be done. The Justice may give directions as to the safe custody of the things seized. He does not take personal charge of the things until after the trial is over. These matters have always been worked out in a practical way, but the fundamental thing is that the purpose of the search warrant is to secure things that will in themselves be relevant to a case to be proved, not to secure an opportunity of making observations in respect of the use of things, and thereby obtain evidence. In this respect, I think the warrant is defective and an order will go quashing it.

In quashing the warrant I do not wish to be taken to be ruling that all those articles mentioned in para. (a) might not be obtained from the company under a search warrant based on an information properly drawn. It would seem to me that if an officer swears, in a properly drawn information setting out the grounds of belief, that he has reasonable ground to believe there are in the possession of the Bell Telephone Co. written records, billings, contracts and memoranda which will afford evidence of the commission of an offence against the *Cr. Code*, the Justice would have a perfect right to issue a search warrant to seize such records.

It was argued that the apparatus described in para. (b) was affixed to the realty and therefore could not be seized under a

search warrant. I am not required to decide in this case that fixtures that will afford evidence of the commission of a crime cannot be seized under a search warrant and, when detached from the realty, be taken before a Justice so that the physical article may be detained for exhibition in a Court at a later stage. On this part of the argument it is not necessary for me to come to a conclusion.

The order will go quashing the warrant, without costs.

Search warrant quashed.

APPENDIX II

REGINA v CHAPMAN & GRANGE 20 C R N S 141

ONTARIO COURT OF APPEAL

Gale C.J.O., Evans and Arnup JJ.A.

Regina v. Chapman and Grange

Conspiracy — Proof — Overt acts need not be proved — Proof of acts done as proof of conspiracy — The Telephone Act, R.S.O. 1970, c. 457, ss. 111, 112, 113, 114 — The Bell Telephone Company of Canada Act, 1880 (Can.), c. 67, s. 25 — The Criminal Code, R.S.C. 1970, c. C-34, s. 423(2).

Conspiracy — To carry out unlawful purpose — Wire-tapping and divulging telephone conversations — Whether such is unlawful purpose — The Telephone Act, R.S.O. 1970, c. 457, ss. 111, 112, 113, 114 — The Bell Telephone Company of Canada Act, 1880 (Can.), c. 67, s. 25 — The Criminal Code, R.S.C. 1970, c. C-34, s. 423(2).

Constitutional law — Offence of acquiring knowledge of and divulging telephone conversations — Whether legislation in relation to property and civil rights or criminal law — Whether province can legislate with regard to telephone lines of federally-incorporated company — The Telephone Act, R.S.O. 1970, c. 457, ss. 111, 112, 113, 114 — The Bell Telephone Company of Canada Act, 1880 (Can.), c. 67, s. 25 — The Criminal Code, R.S.C. 1970, c. C-34, s. 423(2).

Common law offences — Conspiracy to commit common law offence — Eavesdropping — Whether offence at common law — Whether categories of unlawful purpose are closed — The Telephone Act, R.S.O. 1970, c. 457, ss. 111, 112, 113, 114 — The Bell Telephone Company of Canada Act, 1880 (Can.), c. 67, s. 25 — The Criminal Code, R.S.C. 1970, c. C-34, s. 423(2).

Statutory interpretation — Contrasting language — Effect of words omitted from one offence while included in adjacent offences — Reference in provincial offences to telephone lines of federal company — The Telephone Act, R.S.O. 1970, c. 457, ss. 111, 112, 113, 114 — The Bell Telephone Company of Canada Act, 1880 (Can.), c. 67, s. 25 — The Criminal Code, R.S.C. 1970, c. C-34, s. 423(2).

Trade and commerce — Telephone wire tap — Whether provincial offence of acquiring knowledge of and divulging telephone conversations applies in relation to wire tap on telephone line of federally-incorporated company — "Divulge" defined — The Telephone Act, R.S.O. 1970, c. 457, ss. 111, 112, 113, 114 — The Bell Telephone Company of Canada Act, 1880 (Can.), c. 67, s. 25 — The Criminal Code, R.S.C. 1970, c. C-34, s. 423(2).

The appellants were convicted of conspiring to effect an unlawful purpose, to wit: having acquired knowledge of conversations or messages passing over a telephone line and not addressed to or intended for them, to divulge the purport or substance of the conversations or messages. The wording for this unlawful purpose came from s. 112 of The Telephone Act of Ontario. G. was president of a company which specialized in supplying trucks and drivers to strike-bound companies. It was discovered that a telephone line at a union headquarters building was being tapped and its members later captured C., a police constable, when coming to replace a tape recorder which was attached to the telephone junction box. It was found that G. and C. were fellow conspirators in acting on, and divulging information so obtained.

The appellants' arguments were: 1. The Crown had not established that one of the accused had knowledge or was to acquire knowledge of the conversations that might be recorded and that the conspirators agreed to divulge or did divulge the conversations; 2. Section

112 did not apply to lines of the Bell Telephone Company. Section 25 of the federal statute incorporating that company created the offence of "intercepting" a message transmitted on its lines. Also, the offences created by ss. 113 and 114 contained the following words which were not in s. 112: "whether the telephone instrument or line is owned by a telephone system under the jurisdiction of the Legislature or not". Therefore s. 112 could not apply to the line in question for that belonged to the Bell Telephone Company which was federally incorporated; 3. If s. 112 did apply to inter-provincial telephone lines, it was ultra vires as being criminal law, i.e., legislation in relation to a social evil; 4. The unlawful purpose alleged was limited to s. 112 and therefore the trial Judge was wrong in holding that the wording of the indictment would cover wrongful acts under s. 25 of the federal statute or at common law. There was no such offence as conspiracy to eavesdrop since eavesdropping was not a common-law offence. Also, the categories of unlawful purposes were closed.

Held, the appeal must be dismissed.

For conspiracy, overt acts proved need not themselves be acts which constitute an offence. The fact that C. was to obtain the conversation and G. was to divulge it did not make any difference. The offence was complete when the agreement to acquire and divulge conversations was made, even if nothing had been done to carry it out. What was in fact done was evidence not only in [illegible] but in proof of the [illegible] agreement.

To tape-record a telephone conversation and hand the tape over to a person not a party to the conversation with the intention that the latter should listen to the tape is to "divulge" the conversation.

The principle underlying ss. 111 and 112 is that telephone conversations are intended to be private. Section 112 applies to any line in Ontario regardless of the ownership, for that section is legislation in relation to the privacy of the conversation, not the manner of operation of the system.

Section 112 is not legislation in relation to criminal law. As yet, Parliament has not passed any legislation with respect to wire tapping or other misuse of private telephone calls and s. 25 of the federal Bell Telephone Company of Canada Act does not constitute such Parliamentary action. Section 112 would fall under s. 92(13) of the B.N.A. Act, 1867, being legislation in relation to a "civil right".

The unlawful purpose cited in the indictment was limited to s. 112; it did not invoke s. 25 of the federal act or a purpose unlawful at common law.

APPEAL from a conviction for conspiracy to effect an unlawful purpose.

The judgment appealed from was as follows.

F. Armstrong, for the Crown.

D. G. Humphrey, Q.C., for accused Chapman.

G. A. Martin, Q.C., for accused Grange.

28th March 1972. MOORE Co. Ct. J. (orally):—The accused in this case have been charged under s. 423(2)(*a*) of the Criminal Code, R.S.C. 1970, c. C-34, in that they, during the period between 1st June and 15th October 1971, in Metropolitan Toronto, conspired together, one with the other, and with Canadian Driver Pool Limited and divers agents of Canadian Driver Pool Limited, to effect an unlawful purpose, to wit: any one or more

of the said Barry Chapman, Richard Grange and Canadian Driver Pool Limited, or agents thereof, having acquired knowledge of conversations or messages passing over a telephone line located at or near 363 Broadview Avenue, Toronto, and not addressed to, or intended for them, to divulge the purport or the substance of the conversation or messages to any one or more of their own number, their agents or other unknown persons not being lawfully authorized or directed so to do.

Between August 1971 and January 1972 the members of Local 688 of the International Chemical Workers Union were on strike against Redpath Sugar. The union headquarters had been established at 363 Broadview. Douglas Marr was one of the union members, and at 9:00 a.m. on 8th October 1971 was on duty as a union member at union headquarters, and had a telephone conversation with Herb Ragsdale, another union member. He had already become suspicious of the telephone service he was receiving and voiced his suspicion to Ragsdale at the time. After the conversation Marr checked the Bell telephone line and found a tap. The tap was attached by wire to the Bell telephone junction box on the outside of the building and led to a hidden recording device on the ground, which contained a cassette on which his recent conversation had been fully and accurately recorded.

To reach the hidden recorder one had to go northerly along a lane from Gerrard Street about 20 yards along a wire fence to a two to three-foot space between the Toronto Transit Commission shack and a board fence which was situated to the west of the lane.

That evening around 11:00 p.m. another union member, John Shea, saw a car drive up and park just east of the lane. He saw a man get out from the driver's side and go up the lane to where the recorder had been found. This man had a parcel in his hand. The man was followed and found to be crouched or kneeling down west of the wire fence in the immediate vicinity of where the recorder had been found hidden. This person was surrounded and then he was seen to jump up on the roof of the Transit Commission shack with the parcel still in his hand, subsequently jumped down and was apprehended by union members. It was the accused Chapman.

Another union man, Hogg, took the parcel from Chapman and it was found to be a plastic bag which contained a flashlight and a tape recorder. At that moment an off-duty policeman, Patrol Sergeant Sutherland, who was in uniform, came up the lane and on the way he noticed an unmarked police car parked on Gerrard, just east of the lane, with one occupant.

As he walked up the lane he saw a group scuffling, as he described it; saw Chapman surrounded by a group of men. He heard one of the men say, "We have got him, officer. We have got the evidence, too."

The sergeant arrested the accused Chapman. Chapman said to the sergeant, in a quiet, confidential manner, "I am a plainclothes man from No. 31". The sergeant was not satisfied with that and asked for identification and Chapman produced a badge, which according to the sergeant was not the usual form of police identification under the circumstances.

The sergeant went over to the parked car. It was locked. The person inside unlocked the car and got out and he was arrested. This man turned out to be Police Constable MacDonald. The sergeant testified that, because of the way Chapman and MacDonald were acting, he was not satisfied with their identity, and asked for further identification. Both Chapman and MacDonald then produced their identification cards. Sergeant Sutherland testified that he was suspicious of MacDonald because he had not left the patrol car to go to the assistance of Chapman, and because of the way Chapman made his identification.

Police Constable MacDonald testified that he and Chapman were on duty that night operating out of Station No. 31, in plainclothes, in an unmarked police cruiser. Number 31 Division is in the Borough of North York, and about 15 miles from union headquarters, 363 Broadview. The two officers carried out routine investigations until about 10:25 p.m. when, in the words of MacDonald, they decided to go to Gerrard and Broadview. Constable MacDonald did not know what they were looking for but when they arrived and parked, Chapman, according to MacDonald, left the car with a flashlight and carrying his raincoat.

According to MacDonald there was no tape recorder in the car and there could not have been one. I do not accept Officer MacDonald's opinion.

As to Grange, the evidence indicates that through Canadian Driver Pool and other companies he controlled and operated, he supplied certain services to strike-bound companies. Exhibit 27 lists some of these services. I say some because on the third page of this letter it states, and I am quoting, "There are many other services which are tailored to your special needs, but these, due to security, can only be discussed with you personally". The paragraph concludes, "We only use the law and its means".

One of the activities in which Grange indulged and which assisted him in giving service to his customers (in this case, Redpath) was to obtain and act upon information which would keep himself and Canadian Driver Pool — and I am quoting — "ahead of the unions".

I am satisfied on the evidence that some of this information would be and was obtained through the interception of telephone messages passing over the telephone lines of unions, and more particularly, the telephone line of Local 688, located at 363 Broadview Avenue. In this sense the content of the message would be divulged.

I am satisfied that the recording device found at the base of the wall, found by Marr, was owned by Grange or Canadian Driver Pool and was placed there on the instructions of Grange; probably by Chapman.

The evidence of Ross leads me to the inescapable conclusion that Chapman and Grange were fellow conspirators on or about 8th October 1971, to effect the purpose set forth in the indictment.

The question is, however, was that purpose unlawful?

The genesis of modern law of criminal conspiracy is largely to be found in *Poulterers' Case* (1610), 9 Co. Rep. 55b, 77 E.R. 813. During the 17th century it became established in law that a combination to commit any crime was in itself a criminal conspiracy, although the overt act may not have been committed. Conspiracy has always been treated as a common law crime, the gist of the offence being in the combination: see *Wright et al. v. The Queen*, [1964] S.C.R. 192, [1964] 2 C.C.C. 201, 43 D.L.R. (2d) 597.

Conspiracy has two essential elements. One, an agreement between two or more persons, and two, an unlawful purpose or criminal act. It is the unlawful purpose or the criminal object of the conspirators that makes the conspiracy criminal. The offence is completed as soon as the parties have agreed as to their unlawful purpose.

The indictment must set out the unlawful purpose and describe it in such a way as to contain in substance the fundamental ingredients of the particular agreement charged. That is to say, it must specify in substance the specific charges brought against the accused: *Brodie et al. v. The King*, [1936] S.C.R. 188, 65 C.C.C. 289, [1936] 3 D.L.R. 81.

The unlawful purpose may constitute a crime under the Criminal Code, or it is sufficient if the purpose alleged is made

but having regard to fundamental assessments of human values and the purposes of society."

Mr. Martin submits that the purpose relied upon by the Crown as being unlawful is the divulging of the contents of telephone messages to other parties, and that the exact words set forth in the indictment can be found in s. 112 of The Telephone Act, R.S.O. 1970, c. 457, and that the "telephone line" alleged to have been used or tampered with in this case was one that was owned by the Bell Telephone Company of Canada, and that therefore s. 112 does not and could not refer to a telephone line comprising a part of the Bell system, and that if it purported to do so, the section was unconstitutional and ultra vires the legislature of the Province of Ontario. In any event, if a legislature is seeking by s. 112 to suppress anti-social conduct, then it is trespassing on the field of criminal law.

He submits therefore that the expressed purpose is not unlawful. He referred me to two cases: *Rex v. Hayduk,* [1938] O.R. 653, 71 C.C.C. 134, [1938] 4 D.L.R. 762 (C.A.), in which it was stated that the legislation creating offences contra bonos mores is legislation as to criminal law; and *Toronto v. Bell Telephone Co.*, [1905] A.C. 52, C.R. [13] A.C. 361, where the House of Lords held that no provincial legislation was or is competent to limit or interfere with the operations of the Bell system.

I have the utmost respect for the views of Mr. Martin. I have however come to the conclusion that I cannot agree with him on this issue, or that the submissions of Mr. Martin are applicable to the circumstances of this case.

In my opinion, I am not required for the purposes of the charge contained in this indictment to rule as to whether or not s. 112 of The Telephone Act refers to the lines of the Bell Telephone, or if it purported to do so, it was ultra vires of the legislature of Ontario. If I were, I would find that it did, and it was not.

It is clear from the judgment of Fauteux J. [as he then was] in the *Wright* case, supra, that a common-law conspiracy embraces not only a criminal act as set forth in the Code, an act made unlawful by the legislature, but extends to "wrongful acts".

What are wrongful acts? In *Regina v. Newland,* [1954] 1 Q.B. 158, 37 Cr. App. R. 154, [1953] 2 All E.R. 1067, the Court was concerned with the question as to whether or not a conspiracy to effect a public mischief could be maintained in law. The Lord Chief Justice stated, or restated, two well-established principles. These can be found at pp. 163-4:

"In the first place, it is well known that there may be many acts which, if done by an individual would not be indictable, or even actionable as a tort, and yet may become both actionable and criminal if done by a combination of persons as the result of a conspiracy. . .

"Secondly . . . 'There can be no doubt but that all confederacies whatsoever, wrongfully to prejudice a third person are highly criminal at common law'."

On p. 165 His Lordship stated — and I think the words are applicable to this case:

"The particulars sufficiently allege a comon law misdemeanour, namely conspiracy, and whether the matter is looked at simply as a conspiracy to effect an unlawful purpose or a conspiracy by dishonest devices to defeat the clear intention and purpose of an Act of Parliament or to work to the prejudice of the State, in our opinion, they disclose offences which have long been known to the common law of this country."

This would equally be true if the purpose was to interfere with a third person in his trade.

The *Newland* case was followed in *Shaw v. Director of Public Prosecutions*, supra. It was also followed in the case of *Regina v. Fountain*, 49 Cr. App. R. 315, [1965] 2 All E.R. 671n. In the [Cr. App. R.] headnote of the latter case it is stated:

"Though what one man does by way of cheating another in private may not be a criminal offence, when two or more combine together to cheat another, they are guilty of conspiracy to commit a common law cheat and on an indictment for such a conspiracy it is not necessary to allege that the consequences of the cheating had any public manifestation."

Was the purpose of this conspiracy unlawful? In my opinion it was.

Section 25 of The Bell Telephone Company of Canada Act, 1880 (Can.), c. 67, prohibits the wilful interference with or the interception of any message on a telephone line, and terms it to be a misdemeanour.

Section 112 of The Telephone Act makes it an offence to divulge the purport or substance of a conversation or a message acquired from a telephone line and not addressed to or intended for such person.

The purpose of this conspiracy was to carry out 20th-century eavesdropping and divulge the result. This activity, in my opinion, would surely work to the injury of the union in this

case; an unfair and wrongful act under both statutes and the common law. The wording of this indictment would cover all three classes of wrongful acts. I conclude therefore that there are both statutory and common-law prohibitions against the common purpose that was in the minds of Chapman and Grange on or about 8th October 1971 and that the purpose was unlawful.

And therefore I convict them of the offence charged.

G. A. Martin, Q.C., for appellant Grange.

G. S. Lapkin, for appellant Chapman.

A. G. Campbell, for the Crown.

27th December 1972. The judgment of the Court was delivered by

ARNUP J.A.:—The appellants appeal from their conviction on 28th March 1972 by Moore Co. Ct. J., of the Judicial District of York, on the following indictment:

"BARRY CHAPMAN and RICHARD GRANGE stand charged that they, during the period between the first day of June and the 15th day of October in the year 1971, at the Municipality of Metropolitan Toronto and elsewhere in the judicial District of York, conspired together the one with the other, and with Canadian Driver Pool Limited and divers agents of Canadian Driver Pool Limited to effect an unlawful purpose, to wit: any one or more of the said Barry Chapman, Richard Grange, Canadian Driver Pool Limited or agents thereof having acquired knowledge of conversations or messages passing over a telephone line located at or near 363 Broadview Avenue, Toronto, and not addressed to or intended for them, to divulge the purport or substance of the conversations or messages to any one or more of their own number, their agents or other unknown persons, not being lawfully authorized or directed so to do, contrary to the Criminal Code."

The appellants were each fined $500 or 30 days in jail, but the sentences are not in issue on the appeal.

I state the relevant facts as they appear in the factum of Mr. Martin, which was accepted as correct by counsel for the Crown. The appellant Grange at the relevant time was the President of Canadian Driver Pool Limited. That company carries on business in Toronto and is associated with three other companies. It and its associated companies are in the business of supplying trucks and drivers to companies which are strike-bound, and to other companies.

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The appellant Chapman at the relevant time was a constable with the Metropolitan Toronto Police Department, acting in a capacity as a plainclothes detective.

About 27th August 1971 members of Local 688 of the International Chemical Workers' Union engaged in a strike against Redpath Sugars Limited, which lasted for a period of 11 or 12 weeks, terminating about 19th November 1971. In the course of the strike the union used "mass picketing" in an effort to obstruct Redpath Sugars Limited in carrying on its operations. Considerable damage was caused to the property of that company and it requested the assistance of the police on numerous occasions. In the second week of the strike Canadian Driver Pool Limited was engaged by Redpath Sugars Limited to assist in moving its products to its customers when attempts to utilize Redpath's own trucks and the trucks of other hired carriers became too difficult. It was said that the employees of Canadian Driver Pool Limited "seemed better able to avoid violence in crossing picket lines" than Redpath's own employees.

The union office was located in a building at the northeast corner of Gerrard Street and Broadview Avenue. Immediately east of the building was a laneway with a board fence running along its west side.

On 8th October 1971 one Marr, a union member on duty at the headquarters, had a telephone conversation with another union member, and suspecting that the telephone was being "tapped", Marr investigated. He checked the telephone line and located a wire attached to the Bell telephone junction box on the outside of the building. This wire led to a tape recorder hidden under a wooden crate on the ground adjacent to the building, and the tape recorder contained a tape on which Marr's conversation with the other union member had been recorded. Having ascertained these facts, Marr replaced the wire in the junction box with the other end under the wooden crate. It was decided by a group of union members to arrange a "stakeout" in order to capture the person(s) who had placed the recorder there. The recorder was several yards north of Gerrard Street, in the lane, between a Toronto Transit Commission shack and the board fence.

On the same day, at approximately 11:00 p.m., another union member noticed a car proceeding in a westerly direction on the north side of Gerrard Street, stop east of the laneway; he identified it as the same car which shortly before had been stopped on the south side of Gerrard Street, facing in an easterly direction. The car was unmarked. A man carrying a parcel got out of the driver's side of this car and proceeded up the lane-

way to the area where the tape recorder had been found. The man was surrounded by members of the union and in effect "captured" by them. They took the parcel from him. It consisted of a plastic bag containing a flashlight and a "Realistic" tape recorder. The tape recorder which was already in place, hidden under the crate, was a "Steintron" recorder.

The man apprehended eventually was identified as the appellant Chapman (after overcoming the incredulity of the arresting patrol sergeant).

It was proved that Grange in September 1971 had purchased, inter alia, four "Steintron" cassette recorders, and in August 1971 two "Realistic" recorders, and a further "Realistic" on 1st October 1971. It was also proved that the appellant Chapman was acquainted with the appellant Grange and had been in contact with him several times during the relevant period. Chapman had been seen in the company of Grange at Grange's apartment by an employee of Grange, who gave evidence and who testified that on one occasion, about the middle of August 1971, the witness was with Grange at Grange's residence when a tape was played, on a cassette recorder, of a telephone conversation between two people, at the end of which Grange remarked that "this would keep the company ahead of the unions as far as knowing what would be happening". (This incident obviously did not relate to the Redpath Sugars strike which had not yet started.)

While it may not be relevant, I should add that the unmarked car was a police vehicle, with another occupant, also a police constable; both the other occupant and the appellant Chapman were operating out of No. 31 Division, which is in North York, about 15 miles from the union headquarters at 363 Broadview Avenue.

The trial Judge made this finding of fact [p. 145]:

"One of the activities in which Grange indulged and which assisted him in giving service to his customers (in this case, Redpath) was to obtain and act upon information which would keep himself and Canadian Driver Pool — and I am quoting — 'ahead of the unions'.

"I am satisfied on the evidence that some of this information would be and was obtained through the interception of telephone messages passing over the telephone lines of unions, and more particularly the telephone line of Local 683, located at 363 Broadview Avenue. In this sense the content of the message would be divulged.

"I am satisfied that the recording device found at the base of the wall, found by Marr, was owned by Grange or Canadian Driver Pool and was placed there on the instructions of Grange; probably by Chapman.

"The evidence of Ross leads me to the inescapable conclusion that Chapman and Grange were fellow conspirators on or about 8th October 1971, to effect the purpose set forth in the indictment."

Before setting out the issues raised on this appeal I quote four sections of The Telephone Act, R.S.O. 1970, c. 457, and one section from The Bell Telephone Company of Canada Act, 1880 (Can.), c. 67:

"111. Every operator or other person in the employ of a telephone system who divulges the purport or substance of any telephone conversation or message passing over the lines of the system, except when lawfully authorized or directed so to do, is guilty of an offence and on summary conviction is liable to a fine of not more than $50 or to imprisonment for a term of not more than thirty days, or to both.

"112. Every person who, having acquired knowledge of any conversation or message passing over any telephone line not addressed to or intended for such person, divulges the purport or substance of the conversation or message, except when lawfully authorized or directed so to do, is guilty of an offence and on summary conviction is liable to a fine of not more than $50 or to imprisonment for a term of not more than thirty days, or to both.

"113. Every person who, when using a telephone instrument or conversing over a telephone line, whether the telephone instrument or line is owned by a telephone system under the jurisdiction of the Legislature or not, uses indecent, obscene, blasphemous or grossly insulting language is guilty of an offence . . .

"114. Every person who, when using a telephone instrument or conversing over a telephone line, whether the telephone instrument or line is owned by a telephone system under the jurisdiction of the Legislature or not, refuses to give up or permit the use of the line when requested so to do by the operator or by any other person in case of a fire, accident, sickness or other similar emergency is guilty of an offence . . ."

"25. Any person who shall wilfully or maliciously injure, molest or destroy any of the lines, posts or other material or property of the Company, or in any way wilfully obstruct or interfere with the working of the said telephone lines, or inter-

cept any message transmitted thereon, shall be guilty of a misdemeanor."

The identity of language between s. 112 of The Telephone Act and the language used in particularizing the "unlawful purpose" in the indictment is obvious. In substance, the unlawful purpose was to commit the act prohibited by s. 112 of The Telephone Act.

The first proposition submitted by Mr. Martin was that there was no evidence upon which the appellants could be found guilty of the offence with which they were charged. He submitted that the Crown must establish that one of the accused had knowledge or was to acquire knowledge of conversations that might be recorded and that the accused or other persons named as co-conspirators agreed to divulge or did divulge the conversations or the substance thereof. He submitted that there was no evidence that Chapman ever divulged any conversation nor that he agreed to do so, and further that there was no evidence that Chapman had knowledge of the conversations.

It is of course fundamental that the Court keep in mind at all times in this case that the charge is one of conspiracy, and that overt acts proved for the purpose of implicating one or more of the conspirators need not themselves be acts which constitute an offence. The trial Judge clearly had this in his mind throughout his reasons for judgment. In my view it is clear from the reasons for judgment, and from the evidence upon which the trial Judge reached his conclusions of fact, that the agreed-upon purpose of Chapman and Grange was to obtain the precise conversation passing over the union's telephone line and to divulge the substance of it to Canadian Driver Pool Limited and some of its employees. The fact that Chapman was to obtain the conversation, by taping it, and Grange was to divulge it, does not in my view make any difference where the charge is conspiracy. The agreement was to collaborate in acquiring knowledge of the conversations and in divulging the substance of them. The offence was complete when the agreement was made, even if nothing had been done to carry it out. What was in fact done is evidence not only in proof of the agreement itself but in proof of the implication of the two accused in the conspiracy charged.

In this view of the matter it is not necessary to make a finding as to whether the act of Chapman in handing over the tapes removed by him from the hidden tape recorders constituted "divulging" of the conversations which were recorded, although I have no doubt that it did. I derive support for this

view from *United States v. Gruber* (1941), 123 F. 2d 307. In this electronic age, to tape-record a telephone conversation and hand the tape over to a person not a party to the conversation with the intention that the latter should listen to the tape, is to "divulge" the conversation.

The next proposition advanced by Mr. Martin was that s. 112 of The Telephone Act was not intended to apply, and does not apply, to lines of the Bell Telephone Company. The statute incorporating that company has its own offence section, the relevant offence being that of "intercepting" a message transmitted on its lines: s. 25. In support of this proposition Mr. Martin made a careful review of the history of the Ontario Act and particularly of s. 112, which was first enacted in 1917 (Ont.), c. 40, s. 11, by which what is now s. 112 became s. 26(7c). He emphasized particularly the distinction between s. 112, on the one hand, and ss. 113 and 114 on the other, pointing out that the latter two sections expressly contain the clause, with reference to a telephone line, "whether the telephone instrument or line is owned by a telephone system under the jurisdiction of the Legislature or not", words which are not found in s. 112. He referred to Craies on Statute Law, 7th ed., pp. 107-8, in support of the proposition that contrasting language such as is found in ss. 113 and 114 helps to show that the "telephone lines" referred to in s. 112 were not intended to include lines "not under the jurisdiction of the Legislature". (It is common ground that the telephone line in question was that of the Bell Telephone Company of Canada, which carries on inter-provincial operations, and is federally incorporated).

Mr. Martin referred also to various other sections of the Ontario statute, showing that they clearly did not apply to lines of the Bell Telephone Company, and relied upon the cases of *Quebec Ry., Light & Power Co. v. Beauport; Beauport v. Quebec Ry., Power & Light Co.*, [1945] S.C.R. 16, 57 C.R.T.C. 245, [1945] 1 D.L.R. 145, and *Toronto v. Bell Telephone Co.*, [1905] A.C. 52, C.R. [13] A.C. 361.

Mr. Campbell countered this argument by submitting that Mr. Martin was relying upon rules of construction which are laid down as a guide to the court when it is endeavouring to interpret sections whose meaning is not plain, but that such principles have no application to s. 112 which, he says, on its plain meaning applies to any telephone line in Ontario. He asserted that ss. 113 and 114 do not deal with the same subject matter as s. 112 which, as Mr. Campbell put it, is related "not to the use of the system but to the use that can be made of what comes out of the system"; he submitted that ss. 113 and 114 deal with the system qua system.

I think there is merit in the point made (without adopting the semantics which seem to have some kinship to the McLuhanism that "the medium is the message"). However my approach is more fundamental and carries through into the constitutional argument with which I will later deal. In my view a principle underlies both ss. 111 and 112. It is that telephone conversations are intended to be private between the persons who are having them, including persons authorized by them to listen. This right to a private telephone conversation is protected against the acts of operators or other persons in the employ of the system, and against the acts of others who acquire knowledge of a private telephone conversation not intended for them, and makes the divulging of such conversations an offence punishable on summary conviction. Having regard to what I take to be the legislative intention lying behind s. 112, and its unambiguous language, I have no difficulty in concluding that Mr. Campbell is right when he says that it applies to a conversation over any telephone line in Ontario, regardless of the ownership. That section is legislation in relation to the privacy of the conversation, not to the manner of operation of the system.

Mr. Martin's next submission was that if s. 112 does apply to inter-provincial telephone lines, such as those of the Bell Company, it is ultra vires as being criminal law, i.e., it is legislation in relation to a social evil. (He made it clear that he does not argue that s. 112 is ultra vires as being legislation in relation to an inter-provincial telephone company.)

He suggested that we could take judicial notice of the fact that Parliament is considering wire-tapping legislation with the object of making it or some form of it a crime. He also referred to legislation held colourable by the Supreme Court of Canada in *Re Alberta Legislation*, [1938] S.C.R. 100 at 128, [1938] 2 D.L.R. 81, affirmed [1939] A.C. 117, [1938] 3 W.W.R. 337, [1938] 4 D.L.R. 433 (sub nom. *Attorney General for Alberta v. Attorney General for Canada*). He also relied heavily upon the Ontario case of *Rex v. Hayduk*, [1938] O.R. 653, 71 C.C.C. 134, [1938] 4 D.L.R. 762 (C.A.), in which s. 4 of The Standard Hotel Registration of Guests Act, R.S.O. 1937, c. 295, was held ultra vires as being an invasion of the federal power over criminal law. He observed that in Alberta care has been taken to ensure that a section similar to s. 112 of the Ontario Act is limited to lines owned by the Alberta Telephone Commission: The Alberta Government Telephones Act, 1958 (Alta.), c. 85, s. 23 (now R.S.A. 1970, c. 12, s. 30). He also referred to the decision of O'Meara J.S.P. of the Sessions Court in Quebec; *Regina v. Lafferty* (1969), 8 C.R.N.S. 70, where it was held that

the legislation there under review, The Employment Discrimination Act, R.S.Q. 1964, c. 142, did not create a new civil right but was legislation to prevent a social wrong, and was therefore legislation in relation to criminal law. (Mr. Campbell told us that this decision is subject to proceedings to have it reviewed by the Superior Court, which proceedings have not terminated.)

In my view s. 112 is not legislation in relation to criminal law. As yet Parliament has not passed any legislation with respect to wire-tapping or other misuse of private telephone calls. Section 25 of The Bell Telephone Company of Canada Act obviously does not constitute such parliamentary action; it is found in a private act whose validity rests upon the fact that the Bell Telephone Company was and is a work or undertaking, analogous to a telegraph undertaking, connecting one province with another, or extending beyond the limits of the province, and therefore within the powers of Parliament under s. 92(10)(*a*) of the B.N.A. Act, 1867.

It is of course well established that the mere fact that provincial legislation creates a prohibition and provides a penalty does not necessarily bring it within the category of criminal law: *Provincial Secretary of Prince Edward Island v. Egan*, [1941] S.C.R. 396, 76 C.C.C. 227, [1941] 3 D.L.R. 305; *Regina v. Beattie* (1969), 7 C.R.N.S. 116 (Ont. C.A.); *Regina v. Peters*, [1971] 1 O.R. 597, 2 C.C.C. (2d) 336, 12 D.L.R. (3d) 143, affirmed 2 C.C.C. (2d) 393n, 17 D.L.R. (3d) 128n (Can.); *O'Grady v. Sparling*, [1960] S.C.R. 804 at 810, 33 C.R. 293, 33 W.W.R. 360, 128 C.C.C. 1, 25 D.L.R. (2d) 145.

Further, there is no "general area of criminal law" or "domain" of criminal law: *O'Grady v. Sparling*, supra, at p. 810, following *Lord's Day Alliance v. Attorney General of British Columbia*, [1959] S.C.R. 497, 30 C.R. 193, 123 C.C.C. 81, 19 D.L.R. (2d) 97. Whether one uses the historical language involving a search for "the pith and substance of the legislation"; the language of Judson J. in *O'Grady v. Sparling*, supra, at p. 811, "the true object, purpose, nature or character" of the legislation; or simply searches for the subject matter of ss. 91 and 92 of the B.N.A. Act "in relation to which" the legislation has been passed, my conclusion is the same. The legislature of Ontario was not seeking to prohibit a social evil. It was seeking to create a right of privacy with respect to telephone conversations, the divulging of which was prohibited under penalty. This being so, the legislature was competent to pass s. 112 under s. 92(13) of the B.N.A. Act, since it was enacting legislation in relation to a "civil right".

One final aspect of the argument must be considered. The learned trial Judge, in considering whether the appellants were

guilty of a conspiracy to effect an "unlawful purpose", appears to have considered that he was entitled to find an unlawful purpose in s. 112 of The Telephone Act or alternatively, in s. 25 of The Bell Telephone Company of Canada Act, or alternatively, at common law. He concluded his judgment thus [p. 149]:

"The wording of this indictment would cover all three classes of wrongful acts. I conclude therefore that there are both statutory and common-law prohibitions against the common purpose that was in the minds of Chapman and Grange on or about 8th October 1971 and that the purpose was unlawful."

Mr. Martin attacked this finding and submitted that the unlawful object of the agreement could not constitute an "unlawful purpose" within the meaning of s. 423(2) of the Criminal Code, R.S.C. 1970, c. C-34, unless the acts agreed to be carried out constituted an offence under s. 112 of The Telephone Act. He submitted that it is clear from the indictment that the appellants were not charged with a conspiracy to violate s. 25 of The Bell Telephone Company of Canada Act, and that there was no offence at common law which the appellants conspired to commit. He submitted that there is no such offence as "conspiracy to eavesdrop", since eavesdropping is not a common-law offence and he suggested "the categories of unlawful purposes are closed"; in support of this he cited Salmond on Torts, 15th ed., p. 45. He suggested that the House of Lords in the recent case of *Regina v. Knuller (Publishing, Printing and Promotions) Ltd.*, [1972] 2 Q.B. 179, [1972] 3 W.L.R. 143, [1972] 2 All E.R. 898, had imposed very severe limitations, if they had not outright repudiated the broader statements of Viscount Simonds in *Shaw v. Director of Public Prosecutions*, [1962] A.C. 220, 45 Cr. App. R. 113, [1961] 2 All E.R. 446, upon the right of the courts to declare "unlawful" at common law acts not hitherto so declared. Reference should also be made to the judgment of the House of Lords in *Regina v. Bhagwan*, [1972] A.C. 60 at 79-82, 54 Cr. App. R. 460.

As to the basis of this portion of the reasons for judgment at trial Mr. Campbell submitted that the words following "to wit" in the indictment are "only a manifestation of the unlawful purpose" and that the unlawfulness of the purpose can be founded on some unlawfulness that is not particularized in the indictment. In support of this he relied upon *Wright et al. v. The Queen*, [1964] S.C.R. 192, [1964] 2 C.C.C. 201, 43 D.L.R. (2d) 597. I do not regard this case as foundation for his proposition. It seems clear to me that what Fauteux J. [as he then was] was saying at p. 194 was that on a charge of conspiracy to effect an unlawful purpose, to wit: to obtain from a con-

stable of the Ontario Provincial Police information which it was his duty not to divulge, the divulging by the police constable of the information would have been an offence at common law, or under s. 103 of the Criminal Code, or under s. 60 of The (Ontario Provincial) Police Act, R.S.O. 1960, c. 298, and that accordingly any one of these three unlawful purposes was sufficient on which to base the conspiracy count in the indictment.

The indictment in this case, however, does not in my view lend itself to this kind of treatment. As I have said earlier, it is obviously aimed at s. 112 of The Telephone Act; it certainly does not invoke any unlawfulness by reason of breach of s. 25 of The Bell Telephone Company of Canada Act, and in my view it is not aimed at a purpose unlawful at common law. I am not suggesting that an indictment, based on the facts proved in this case, could not have been drawn in such a way as to enable the Crown at least to argue that the purpose was *unlawful* at common law, even if not a *crime* at common law. I am simply saying that that is not this case. The Crown chose to charge a conspiracy which was in my view founded solely on s. 112 of The Telephone Act.

This makes it unnecessary to consider further the suggestion of Mr. Campbell that eavesdropping was an "unlawful act" at common law (cf. *Frey v. Fedoruk*, [1950] S.C.R. 517, 10 C.R. 26, 97 C.C.C. 1, [1950] 3 D.L.R. 513) or whether eavesdropping constituted "the tort of breach of confidence", which Mr. Campbell, I think optimistically, described as a "disputed area".

It follows also that I do not need to consider further the question of "public mischief", and conspiracy to commit it. This is not what these appellants were charged with doing.

My conclusion accordingly is that s. 112 of The Telephone Act is valid legislation; and agreement to contravene it, either in the sense of depriving persons entitled to its protection of the civil right which that section gives them, or to contravene the section merely by doing what is prohibited on terms of penalty, is an agreement to effect an unlawful purpose; and there was evidence to support a conviction against both appellants upon the indictment. I would therefore dismiss their appeal.

A 100

COMMENTARY. See Glanville Williams, *Criminal Law*, The General Part, Chapter 10; Archbold, 33rd ed., 20.

Evidence—*Admissibility—evidence illegally obtained*

KURUMA *v.* R.[7] (Judicial Committee of the Privy Council: Lords Goddard C.J. and Oaksey and Mr. L. M. D. de Silva: January 11, 1955) ([1955] 2 W.L.R. 223; [1955] 1 All E.R. 236).

K. was charged with being in unlawful possession of ammunition contrary to the Kenya Emergency Regulations, 1952. The regulations provided that any police officer of or above the rank of assistant inspector might stop and search any individual if he suspected that any evidence of the commission of an offence might be found on that individual. Evidence was given that K. was stopped and searched by two police constables, neither of whom was of or above the rank of assistant inspector, and two rounds of ammunition were found on him. The two rounds were produced in evidence. K. was convicted. He appealed on the ground that the evidence proving that he was in possession of the ammunition was illegally obtained.

Held, dismissing the appeal, that the test to be applied in considering whether evidence was admissible was whether it was relevant to the matters at issue. If it was, it was admissible and a court was not concerned with how the evidence was obtained. There was no difference in principle for this purpose between a civil and criminal case, although in a criminal case the judge always had a discretion to disallow evidence if the strict rules of admissibility would operate unfairly against the accused. This did not qualify the rule as to the admission of confessions which was that a confession could only be admitted if it was voluntary, and one obtained by threats or promises held out by a person in authority was not to be admitted. Accordingly, the evidence in the present case was properly admitted. [J. D. P.]

COMMENTARY. An article on this case will be published in a future issue.

False Imprisonment—*Arrest by policeman—charge of obstruction.*

SHERBOURNE *v.* WALKER[8] (Queen's Bench Division: Sellers J.: February 15, 1955) (*The Times*, February 16, 1955).

The plaintiff was on a feed cab rank where taxicabs could

[7] For the appellant: *Dudley Collard* (instructed by Gaster & Turner). For the Crown: *D. A. Grant* (instructed by Charles Russell & Co.).

[8] For the plaintiff: *Sebag Shaw* (instructed by Philip Conway, Thomas & Co.). For the defendant: *W. Stabb* (instructed by the Solicitor, Metropolitan Police).

APPENDIX II

RE: ATTORNEY GENERAL OF QUEBEC v. BEGIN

SUPREME COURT OF CANADA.

Kerwin C.J.C. and Taschereau, Cartwright, Fauteux and Abbott JJ.

Attorney General of Quebec v. Begin.

Automobiles — Manslaughter arising out of operation of a motor vehicle — Admissibility of evidence of blood tests — Question whether blood tests can be used in cases other than those provided for in s. 285 (now s. 221(3)) — Question of failure to warn accused before taking blood sample considered — Distinction between self-incrimination and rules governing admission of confessions and other statements — Accused agreeing to taking of blood sample — Evidence of blood test held admissible even though accused had not been previously warned — Review of previous decisions.

Accused was charged with motor manslaughter. A question arose whether or not accused was intoxicated at the time of the accident. Consent of accused was obtained by the police to take a sample of his blood for analysis. No warning was given to accused. A sample of accused's blood was taken either by the police or the prison doctor and this was introduced in evidence. Accused was convicted and he appealed. His appeal was allowed by the Court of Appeal (see 21 C.R. 33). The Court of Appeal decided that the provisions of s. 285 of The Criminal Code had no application in a manslaughter case and that accused should have been warned prior to the taking of the blood test. The Attorney General then obtained leave to appeal to the Supreme Court of Canada on two questions of law (1) Was the Court of Appeal right in deciding that subss. 4d and 4e of s. 285 of The Criminal Code had no application in the circumstances of the case in view of the fact that accused was not charged under said s. 285 but was charged with manslaughter?; (2) Was the Court of Appeal right in deciding that on a charge of manslaughter evidence as to a blood test to which accused submitted is only admissible if accused has been warned that it might be used in evidence against him?

Held, the appeal should be allowed and the conviction of manslaughter restored.

1. Confusion has arisen between the rules as to the admissibility of statements or admissions and those relating to self-incrimination. Nothing in this judgment was to be taken as weakening the effect of the rules as to the admissibility of statements or admissions because the two matters are entirely distinct.

2. The test to be applied in considering whether evidence is admissible is whether it is relevant to the matters in issue. An illegality affecting the method of obtaining evidence does not *per se* affect the admissibility of the evidence at the trial: *Kuruma v. The Queen*, [1955] A.C. 197 at 203, 204.

3. Accused consented to the blood test but even if he had not been asked and therefore had not consented, the evidence would be admissible as there was no suggestion that any force had been exercised: *Rex v. McNamara*, 11 C.R. 147, [1951] O.R. 6, 99 C.C.C. 107, 1951 Can. Abr. 297, approved; *Rex v. Nowell*, [1948] 1 All E.R. 794, 32 Cr. App. R. 173, referred to.

APPEAL by the Attorney General of Quebec from a decision of the Court of Queen's Bench (Appeal side) (21 C.R. 33) on

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APPENDIX I

LAWS AND STATUTES RELIED ON

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APPENDIX I

(1) "AN ACT TO INCORPORATE THE BELL TELEPHONE COMPANY OF CANADA "
(1880, STATUTES OF CANADA, ch.67, Section 25)

25. Any person who shall wilfully or maliciously injure, molest or destroy any of the lines, posts or other material or property of the Company, or in any way wilfully obstruct or interfere with the working of the said telephone lines, or intercept any message transmitted thereon, shall be guilty of a misdemeanor.

A 105

APPENDIX I

THE CRIMINAL CODE -

a) Section 287 present Code (in force in 1971)

A 106

THEFT OF TELECOMMUNICATION SERVICE—"Telecommunication".

287. (1) Every one commits theft who fraudulently, maliciously, or without colour of right,

(a) abstracts, consumes or uses electricity or gas or causes it to be wasted or diverted, or

(b) uses any telecommunication wire or cable or obtains any telecommunication service.

(2) In this section, "telecommunication" means any transmission, emission or reception of signs, signals, writing, images or sounds or intelligence of any nature by wire or cable. 1960-61, c. 43, s. 6.

The word "fraudulently" does not mean that the Crown must prove that the accused deceived the utility company into willingly providing the service; the expression only connotes an intentional and deliberate taking of service that was not his to obtain: *R. v. BRAIS* (1972), 7 C.C.C. (2d) 301, 20 C.R.N.S.190, [1972] 5 W.W.R.671 (B.C.C.A.).

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APPENDIX I

THE CRIMINAL CODE -

b) Section 273, Code of 1960

THEFT OF SERVICES.

273. Every one commits theft who fraudulently or maliciously

***(a)* abstracts, consumes or uses electricity or gas or causes it to be wasted or diverted, or**

***(b)* uses a telephone or telegraph line or obtains telephone or telegraph service.**

An article on the principles of punishment, by Henry Palmer, [1957] Crim. L.R.536, notes the case of *R. v. NORTH* in which accused was convicted of fraudulently abstracting electricity by inserting in the meter half-pennies that he had filed down until they were the size of shillings.

A 109

APPENDIX I

THE CRIMINAL CODE -

c) Section 387 present code (in force in 1971)

Mischief

MISCHIEF—Punishment—Idem—Idem—Offence—Saving—Idem.

387. (1) Every one commits mischief who wilfully

(a) destroys or damages property,

(b) renders property dangerous, useless, inoperative or ineffective,

(c) obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property, or

(d) obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property.

(2) Every one who commits mischief that causes actual danger to life is guilty of an indictable offence and is liable to imprisonment for life.

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Section 387--*continued*

(3) Every one who commits mischief in relation to public property is guilty of

(a) **an indictable offence and is liable to imprisonment for fourteen years, or**

(b) **an offence punishable on summary conviction.**

(4) Every one who commits mischief in relation to private property is guilty of

(a) **an indictable offence and is liable to imprisonment for five years, or**

(b) **an offence punishable on summary conviction.**

(5) Every one who wilfully does an act or wilfully omits to do an act that it is his duty to do is, if that act or omission is likely to constitute mischief causing actual danger to life, or to constitute mischief in relation to public property or private property, guilty of

(a) **an indictable offence and is liable to imprisonment for five years, or**

(b) **an offence punishable on summary convicton. 1972, c. 13, s. 30.**

(6) No person commits mischief within the meaning of this section by reason only that

(a) **he stops work as a result of the failure of his employer and himself to agree upon any matter relating to his employment,**

(b) **he stops work as a result of the failure of his employer and a bargaining agent acting on his behalf to agree upon any matter relating to his employment, or**

(c) **he stops work as a result of his taking part in a combination of workmen or employees for their own reasonable protection as workmen or employees.**

(7) No person commits mischief within the meaning of this section by reason only that he attends at or near or approaches a dwelling-house or place for the purpose only of obtaining or communicating information. 1953-54, c. 51, s. 372.

Subsec. (1). The gravamen of this offence is the commission of mischief and an information that sets out the alternative modes in para. (*c*) is not duplicitious: *RE REGINA AND HIBBS* (1973), 10 C.C.C. (2d) 513, 22 C.R.N.S.37 *sub nom. A.-G. ALTA. v. HIBBS* (Alta. S.C.).

Subsec. (2). The actual danger to life must be the direct result of a deliberate act of mischief and not just merely incidental thereto: *R. v. NAIRN* (1955), 112 C.C.C.272, 36 M.P.R.151 (Nfld.S.C.).

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APPENDIX I

THE CRIMINAL CODE -

d) Section 423 present code (in force in 1971; and also in 1965 and 1966 under number 406)

CONSPIRACY—Common law conspiracy.

423. (1) Except where otherwise expressly provided by law, the following provisions apply in respect of conspiracy, namely,

***(a)* every one who conspires with any one to commit murder or to cause another person to be murdered, whether in Canada or not, is guilty of an indictable offence and is liable to imprisonment for fourteen years;**

***(b)* every one who conspires with any one to prosecute a person for an alleged offence, knowing that he did not commit that offence, is guilty of an indictable offence and is liable**

(i) to imprisonment for ten years, if the alleged offence is one for which, upon conviction, that person would be liable to be sentenced to death or to imprisonment for life or for fourteen years, or

(ii) to imprisonment for five years, if the alleged offence is one for which, upon conviction, that person would be liable to imprisonment for less than fourteen years;

***(c)* every one who conspires with any one to induce, by false pretences, false representations or other fraudulent means, a woman to commit adultery or fornication, is guilty of an indictable offence and is liable to imprisonment for two years; and**

***(d)* every one who conspires with any one to commit an indictable offence not provided for in paragraph *(a)*, *(b)* or *(c)* is guilty of an indictable offence and is liable to the same punishment as that to which an accused who is guilty of that offence would, upon conviction, be liable.**

(2) Every one who conspires with any one

***(a)* to effect an unlawful purpose, or**

***(b)* to effect a lawful purpose by unlawful means,**

is guilty of an indictable offence and is liable to imprisonment for two years. 1953-54, c. 51, s. 408.

A husband and wife cannot be found guilty of conspiring together as in law they are considered as one person: *KOWBEL v. THE QUEEN* (1954), 110 C.C.C.47, 18 C.R.380 (4:1) (S.C.C.).

A withdrawal of a charge is not the equivalent of an acquittal on the merits and accordingly a conviction upon a plea of guilty, where the charge was withdrawn against his co-conspirator, is valid *R. v. MCRAE* (1955), 111 C.C.C.162, 21 C.R.13 (Ont.C.A.).

Section 423 *continued*

Aiding and abetting pursuant to a common intent and design in the commission of a substantive offence is not necessarily the same thing as conspiring to commit the same offence, and accordingly an acquittal of the conspiracy is not inconsistent with a conviction on the substantive count: *KOURY v. THE QUEEN*, [1964] 2 C.C.C.97, 42 C.R.210 (S.C.C.).

An agreement to commit a number of indictable offences is only one conspiracy transaction: *R. v. KRUEGER*, [1966] 3 C.C.C.127, 55 W.W.R. 624 (Sask.C.A.) and *R. v. ADDISON ex p. MOONEY*, [1970] 1 C.C.C. 127, [1969] 2 O.R.671 (C.A.).

On the issue of intent in a charge of conspiracy the rule in *HODGE'S CASE* (1838), 2 Lewin 227, 168 E.R.1136, does not apply: *R. v. LAUNDRIAULT*, [1968] 2 C.C.C.379, [1968] 1 O.R.281 (C.A.), but where participation in the agreement is in issue the rule applies: *R. v. SMITH* (1971), 6 C.C.C.(2d) 170, [1972] 2 O.R.219 (C.A.).

Before evidence of an overt act on the part of co-accused conspirators is admissible against another accused there must first be evidence that he was a participant in the conspiracy: *R. v. BIRD*, [1969] 2 C.C.C.182 [1969] 1 O.R.268 (C.A.).

A useful review of the law of conspiracy and attendant evidentiary problems is found in *R. v. PROVINCIAL MAGISTRATE, ex p. APPEL*, [1970] 2 C.C.C.183, 9 C.R.N.S.73 *sub nom. R. v. APPEL* (Man. Q.B.).

Where the other conspirator is acquitted at a subsequent separate trial the first conspirator's conviction found in a different *forum* must be quashed: *R. v. FUNNELL* (1972), 6 C.C.C. (2d) 215, [1972] 2 O.R.301 (Ont. C.A.).

In *R. v. McDONALD et al.* (1972), 10 C.C.C.(2d) 1, 20 C.R.N.S.369 *sub nom. R. v. McDONALD et al.: LAVTECH and KATZ v. THE QUEEN* (Alta.S.C.) it was held that in a conspiracy trial when the proof of the agreement is circumstantial and imports guilty intent on the basis that a man who does an act intends to do it, then the limitation put upon the rule in *Hodge's Case* by *R. v. MITCHELL* [1965] 1 C.C.C.155, [1964] S.C.R.471, does not apply unless a separate issue on intent has been raised by the defence.

In conspiracy the overt acts proved for the purpose of implicating one or more of the conspirators need not themselves be acts which constitute an offence: *R. v. CHAPMAN and GRANGE* (1972), 11 C.C.C. (2d) 84, 20 C.R.N.S.141 (Ont. C.A.).

Subsec. (2). The "unlawful purpose" is not restricted to Criminal Code or common law offences *per se* but may include an offence created by provincial statute: *R. v. LAYTON, Ex parte THODAS et al.*, [1970] 5 C.C.C. 260, 10 C.R.N.S.290, *sub nom. RE THODAS* (B.C.C.A.).

APPENDIX I

THE QUEBEC TELEGRAPH & TELEPHONE COMPANIES ACT -

(Revised Statutes of Quebec, 1970, ch. 255, s. 23-24).

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Secret des employés, etc.

23. Tout opérateur, ou toute autre personne employée par une compagnie de téléphone qui écoute une conversation ou un message se faisant au moyen d'un appareil de cette compagnie, ou en prend connaissance, et qui, sauf dans le cas où elle est légalement autorisée ou engagée à le faire, divulgue la teneur ou substance de cette conversation ou de ce message, est passible d'une amende de cent dollars, recouvrable sur poursuite intentée devant le tribunal compétent, par toute personne poursuivant en son nom, ou, à défaut de paiement de cette amende, d'un empri-

Peine.

Secrecy by employees, etc.

23. Every operator or other person in the employ of a telephone company, who listens to or acquires knowledge of any conversation or message that is being carried on by means of the apparatus of such company, and who, except when lawfully authorized or directed so to do, divulges the purport or substance of such conversation or message, shall be liable to a penalty of one hundred dollars recoverable by suit in a court of competent jurisdiction by any person suing therefor in his own name, or, in default of payment of such penalty, to imprisonment for a

Penalty.

sonnement pendant une période de temps n'excédant pas trois mois ou de deux à la fois, à la discrétion du tribunal devant lequel le délinquant est traduit et condamné. S. R. 1941, c. 298, a. 23.

Message recorded, etc.

24. Toute personne qui écoute une conversation ou un message passant sur les lignes d'une compagnie de téléphone, sans être autorisée à cette personne ou en prendre connaissance, et divulgue cette conversation ou ce message, ou en divulgue la teneur ou la substance, sauf dans le cas où elle est légalement tenue ou engagée à le faire, est passible de la même amende et du même emprisonnement que ceux imposés par l'article 23. S. R. 1941, c. 298, a. 24.

Message overheard, etc.

24. Every person who listens to or acquires knowledge of any conversation or message passing over the lines of a telephone system, not addressed to or intended for such person, and divulges the same or the purport or substance thereof, except when lawfully authorized or required so to do, shall be liable to the same penalty and imprisonment as are enacted in section 23. R. S. 1941, c. 298, s. 24.

Compagnies formées avant 1951

25. Toute association ou compagnie de téléphone, organisée le ou avant le 7 mars 1951, et en opération à cette date continue son existence nonobstant la date fixée dans le certificat déposé au bureau du secrétaire de la province, comme dans celle à laquelle cette association ou compagnie de téléphone devait cesser d'exister.

Liquidation

Une telle association ou compagnie de téléphone ainsi continuée cesse d'exister lorsque la majorité des associés décide, à une assemblée régulièrement convoquée à cette fin, de liquider les affaires de l'association ou compagnie. S. R. 1941, c. 298, a. 25.

Companies formed before 1951

25. Any telephone association or company organized on or before the 7th of March, 1951 and operating at such date shall continue to exist notwithstanding the date fixed in the memorandum filed in the office of the Provincial Secretary, as being the one on which such association or company shall cease to exist.

Winding up.

Any such telephone association or company so continued shall cease to exist when the majority of the partners decide, at a meeting regularly called for such purpose, to wind-up the business of the association or company. R. S. 1941, c. 298, s. 25.

APPENDIX I

THE CIVIL CODE OF THE PROVINCE OF QUEBEC, Section 1612 -

Art. 1612. Le locateur est obligé, par la nature du contrat:

1. De délivrer au locataire la chose louée;

2. D'entretenir cette chose en état de servir à l'usage pour lequel elle a été louée;

3. De procurer la jouissance paisible de la chose pendant la durée du bail. — N. 1719. C. 1492 s.

Art. 1612. The lessor is obliged by the nature of the contract:

1. To deliver to the lessee the thing leased;

2. To maintain the thing in a fit condition for the use for which it has been leased;

3. To give peaceable enjoyment of the thing during the continuance of the lease. — N. 1719. C. 1492 s.

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APPENDIX I

CRIMINAL CODE (amendment of June 30th 1974) -

PART IV.1 - (Sections 178.1 to 178.23 incl).

PART IV.1

INVASION OF PRIVACY

Interception of Communications

DEFINITIONS—"Authorization"—"Electromagnetic, acoustic, mechanical or other device"—"Intercept"—"Offence"—"Private communication"—"Self".

178.1 In this Part,

"authorization" means an authorization to intercept a private communication given under section 178.13 or subsection 178.15(2);

"electromagnetic, acoustic, mechanical or other device" means any device or apparatus that is used or is capable of being used to intercept a private communication, but does not include a hearing aid used to correct subnormal hearing of the user to not better than normal hearing;

"intercept" includes listen to, record or acquire a communication or acquire the substance, meaning or purport thereof;

"offence" means an offence contrary to or any conspiracy or attempt to commit or being accessory after the fact in relation to sections 47, 51, 52, 58, 62, 76.1, 76.2, 76.3, 78, 79, 80, 108, 109, 110, 121, 178.11, 178.18, 218, 247, 281.1, 303, 305, 306, 312, 314, 325, 326, 331, 338, 339, 383, 389, 407, 408, 410, paragraph 186(1)(*e*) and paragraph 291(*a*); sections 4 and 5 of the *Narcotic Control Act*; sections 34 and 42 of the *Food and Drugs Act*; section 192 of the *Customs Act*; unlawful distillation, selling, offering to sell or purchasing of spirits contrary to sections 158 and 163 of the *Excise Act*; or any other indictable offence in respect of which there are reasonable and probable grounds to believe that it forms a pattern of similar or related offences by two or more persons acting in concert, and that such pattern is part of the activities of organized crime;

Section 178.1—*continued*

"private communication" means any oral communication or any telecommunication made under circumstances in which it is reasonable for the originator thereof to expect that it will not be intercepted by any person other than the person intended by the originator thereof to receive it;

"sell" includes offer for sale, expose for sale, have in possession for sale, distribute or advertise for sale. 1973, c. 50, s. 2.

INTERCEPTION—Saving provision—Consent to interception.

178.11 (1) Every one who, by means of an electromagnetic, acoustic, mechanical or other device, wilfully intercepts a private communication is guilty of an indictable offence and liable to imprisonment for five years.

(2) Subsection (1) does not apply to

(a) a person who has the consent to intercept, express or implied, of the originator of the private communication or of the person intended by the originator thereof to receive it;

(b) a person who intercepts a private communication in accordance with an authorization or any person who in good faith aids in any way a person whom he has reasonable and probable grounds to believe is acting with any such authorization;

(c) a person engaged in providing a telephone, telegraph or other communication service to the public who intercepts a private communication,

(i) if such interception is necessary for the purpose of providing such service,

(ii) in the course of service observing or random monitoring necessary for the purpose of mechanical or service quality control checks, or

(iii) if such interception is necessary to protect the person's rights or property directly related to providing such service; or

(d) an officer or servant of Her Majesty in right of Canada in respect of a private communication intercepted by him in the course of random monitoring that is necessarily incidental to radio frequency spectrum management in Canada.

(3) Where a private communication is originated by more than one person or is intended by the originator thereof to be received by more than one person, a consent to the interception thereof by any one of such persons is sufficient for the purposes of paragraph (2)(*a*), subsection 178.16(1) and subsection 178.2(1). 1973, c.50, s.2.

APPLICATION FOR AUTHORIZATION.

178.12 An application for an authorization shall be made *ex parte* and in writing to a judge of a superior court of criminal jurisdiction,

or a judge as defined in section 482 and shall be signed by the Attorney General of the province in which the application is made or the Solicitor General of Canada or an agent specially designated in writing for the purposes of this section by

(a) the Solicitor General of Canada personally, if the offence under investigation is one in respect of which proceedings, if any, may be instituted at the instance of the Government of Canada and conducted by or on behalf of the Attorney General of Canada, or

(b) the Attorney General of a province personally, in respect of any other offence in that province,

and shall be accompanied by an affidavit which may be sworn on the information and belief of a peace officer or public officer deposing to the following matters, namely:

(c) the facts relied upon to justify the belief that an authorization should be given together with particulars of the offence;

(d) the type of private communication proposed to be intercepted;

(e) the names and addresses, if known, of all persons, the interception of whose private communications there are reasonable and probable grounds to believe may assist the investigation of the offence, and if not known, a general description of the place at which private communications are proposed to be intercepted or, if a general description of that place cannot be given, a general description of the manner of interception proposed to be used;

(f) the period for which the authorization is requested; and

(g) whether other investigative procedures have been tried and have failed or why it appears they are unlikely to succeed or that the urgency of the matter is such that it would be impractical to carry out the investigation of the offence using only other investigative procedures. 1973, c.50, s.2.

GROUNDS ON WHICH JUDGE MUST BE SATISFIED—Content and limitation of authorization—Renewal of authorization—Grounds on which renewal granted.

178.13 (1) An authorization may be given if the judge to whom the application is made is satisfied that it would be in the best interests of the administration of justice to do so and that

(a) other investigative procedures have been tried and have failed;

(b) other investigative procedures are unlikely to succeed; or

(c) the urgency of the matter is such that it would be impractical to carry out the investigation of the offence using only other investigative procedures.

(2) An authorization shall

(a) state the offence in respect of which private communications may be intercepted;

Section 178.13—*continued*

(b) state the type of private communication that may be intercepted;

(c) state the identity of the persons, if known, whose private communications are to be intercepted and where the identity of such persons is not known, generally describe the place at which private communications may be intercepted or, if a general description of that place cannot be given, generally describe the manner of interception that may be used;

(d) contain such terms and conditions as the judge considers advisable in the public interest; and

(e) be valid for the period, not exceeding thirty days, set forth therein.

(2.1) The Solicitor General of Canada or the Attorney General, as the case may be, may designate a person or persons who may intercept private communications under authorizations.

(3) Renewals of an authorization may be given from time to time by a judge of a superior court of criminal jurisdiction or a judge as defined in section 482 upon receipt by him of an *ex parte* application in writing signed by the Attorney General of the province in which the application is made or the Solicitor General of Canada or an agent specially designated in writing for the purposes of section 178.12 by the Solicitor General of Canada or the Attorney General, as the case may be, accompanied by an affidavit of a peace officer or public officer deposing to the following matters, namely:

(a) the reason and period for which the renewal is required, and

(b) full particulars, together with times and dates, when interceptions, if any, were made or attempted under the authorization, and any information that has been obtained by any interception,

and supported by such other information as the judge may require.

(4) A renewal of an authorization may be given if the judge to whom the application is made is satisfied that any of the circumstances described in subsection (1) still obtain, but no such renewal shall be for a period exceeding thirty days. 1973, c.50, s.2.

MANNER IN WHICH APPLICATION TO BE KEPT SECRET—Order of judge.

178.14 (1) All documents relating to an application made pursuant to section 178.12 or subsection 178.13(3) are confidential and, with the exception of the authorization, shall be placed in a packet and sealed by the judge to whom the application is made immediately upon determination of such application, and such packet shall be kept in the custody of the court in a place to which the public has no access or in such other place as the judge may authorize and shall not be

(a) opened or the contents thereof removed except

(i) for the purpose of dealing with an application for renewal of the authorization, or

(ii) pursuant to an order of a judge of a superior court of criminal jurisdiction or a judge as defined in section 482; and

(b) destroyed except pursuant to an order of a judge referred to in subparagraph *(a)* (ii).

(2) An order under subsection (1) may only be made after the Attorney General or the Solicitor General by whom or on whose authority the application was made for the authorization to which the order relates has been given an opportunity to be heard. 1973, c.50, s.2.

APPLICATIONS TO SPECIALLY APPOINTED JUDGES—Authorizations in emergency—Certain interceptions deemed not lawful—"Chief Justice" defined—Inadmissibility of evidence.

178.15 (1) Notwithstanding section 178.12, an application for an authorization may be made *ex parte* to a judge of a superior court of criminal jurisdiction, or a judge as defined in section 482, designated from time to time by the Chief Justice, by a peace officer specially designated in writing for the purposes of this section by

(a) the Solicitor General of Canada, if the offence is one in respect of which proceedings, if any, may be instituted by the Government of Canada and conducted by or on behalf of the Attorney General of Canada, or

(b) the Attorney General of a province, in respect of any other offence in the province,

if the urgency of the situation requires interception of private communications to commence before an authorization could, with reasonable diligence, be obtained under section 178.13.

(2) Where the judge to whom an application is made pursuant to subsection (1) is satisfied that the urgency of the situation requires that interception of private communications commence before an authorization could, with reasonable diligence, be obtained pursuant to section 178.13, he may, on such terms and conditions, if any, as he considers advisable, give an authorization in writing for a period of up to thirty-six hours.

(3) For the purposes of section 178.16 only, an interception of a private communication in accordance with an authorization given pursuant to this section shall be deemed not to have been lawfully made unless the judge who gave the authorization or, if such judge is unable to act, a judge of the same jurisdiction, certifies that if the application for the authorization had been made to him pursuant to section 178.12 he would have given the authorization.

(4) In this section, "Chief Justice" means

(a) in the Province of Ontario, the Chief Justice of the Supreme Court;

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Section 178.15—*continued*

(*b*) in the Province of Quebec, the Chief Justice of the Court of Queen's Bench (Crown Side);

(*c*) in the Provinces of Nova Scotia, New Brunswick, Prince Edward Island, Alberta and Newfoundland, the Chief Justice of the Supreme Court;

(*d*) in the Province of British Columbia, the Chief Justice of the Supreme Court;

(*e*) in the Provinces of Manitoba and Saskatchewan, the Chief Justice of the Court of Queens Bench;

(*f*) in the Yukon Territory, the judge of the Supreme Court; and

(*g*) in the Northwest Territories, the judge of the Supreme Court.

(5) The trial judge may deem inadmissible the evidence obtained by means of an interception of a private communication pursuant to a subsequent authorization given under this section, where he finds that the application for such subsequent authorization was based on the same facts, and involved the interception of the private communications of the same person or persons, or related to the same offence, on which the application for the original authorization was based. 1973, c.50, s.2.

INADMISSIBILITY OF PRIVATE COMMUNICATION—Judge may rule evidence admissible—Application of subs. (1)—Notice of intention to produce evidence —Privileged evidence.

178.16 (1) A private communication that has been intercepted and evidence obtained directly or indirectly as a result of information acquired by interception of a private communication are both inadmissible as evidence against the originator thereof or the person intended by the originator thereof to receive it unless

(*a*) the interception was lawfully made; or

(*b*) the originator of the private communication or the person intended by the originator thereof to receive it has expressly consented to the admission thereof.

(2) Where in any proceedings the judge is of the opinion that any private communication or any other evidence that is inadmissible pursuant to subsection (1)

(*a*) is relevant, and

(*b*) is inadmissible by reason only of a defect of form or an irregularity in procedure, not being a substantive defect or irregularity, in the application for or the giving of the authorization under which such private communication was intercepted or by means of which such evidence was obtained, or

(c) that, in the case of evidence, other than the private communication itself, to exclude it as evidence may result in justice not being done,

he may, notwithstanding subsection (1), admit such private communication or evidence as evidence in such proceedings.

(3) Subsection (1) applies to all criminal proceedings, and to all civil proceedings and other matters whatever respecting which the Parliament of Canada has jurisdiction.

(4) A private communication that has been lawfully intercepted shall not be received in evidence unless the party intending to adduce it has given to the accused reasonable notice of his intention together with

(a) a transcript of the private communication, where it will be adduced in the form of a recording, or a statement setting forth full particulars of the private communication, where evidence of the private communication will be given *viva voce*; and

(b) a statement respecting the time, place and date of the private communication and the parties thereto, if known.

(5) Any information obtained by an interception that, but for the interception would have been privileged, remains privileged and inadmissible as evidence without the consent of the person enjoying the privilege. 1973, c.50, s.2.

FURTHER PARTICULARS.

178.17 Where an accused has been given notice pursuant to subsection 178.16(4), any judge of the court in which the trial of the accused is being or is to be held may at any time order that further particulars be given of the private communication that is intended to be adduced in evidence. 1973, c.50, s.2.

POSSESSION, ETC.—Exemptions—Terms and conditions of licence.

178.18 (1) Every one who possesses, sells or purchases any electromagnetic, acoustic, mechanical or other device or any component thereof knowing that the design thereof renders it primarily useful for surreptitious interception of private communications is guilty of an indictable offence and liable to imprisonment for two years.

(2) Subsection (1) does not apply to

(a) a police officer or police constable in possession of a device or component described in subsection (1) in the course of his employment;

(b) a person in possession of such a device or component for the purpose of using it in an interception made or to be made in accordance with an authorization;

(c) an officer or servant of Her Majesty in right of Canada or a member of the Canadian Forces in possession of such a device or component in the course of his duties as such an officer, servant or member, as the case may be; and

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Section 178.18—*continued*

(d) any other person in possession of such a device or component under the authority of a licence issued by the Solicitor General of Canada.

(3) A licence issued for the purpose of paragraph (2)(*d*) may contain such terms and conditions relating to the possession, sale or purchase of a device or component described in subsection (1) as the Solicitor General of Canada may prescribe. 1973, c.50, s.2.

FORFEITURE—Limitation.

178.19 (1) Where a person is convicted of an offence under section 178.11 or 178.18, any electromagnetic, acoustic, mechanical or other device by means of which the offence was committed or the possession of which constituted the offence, upon such conviction, in addition to any punishment that is imposed, may be ordered forfeited to Her Majesty whereupon it may be disposed of as the Attorney General directs.

(2) No order for forfeiture shall be made under subsection (1) in respect of telephone, telegraph or other communication facilities or equipment owned by a person engaged in providing telephone, telegraph or other communication service to the public or forming part of the telephone, telegraph or other communication service or system of such a person by means of which an offence under section 178.11 has been committed if such person was not a party to the offence. 1973, c.50, s.2.

DISCLOSURE OF INFORMATION—Exemptions.

178.2 (1) Where a private communication has been intercepted by means of an electromagnetic, acoustic, mechanical or other device without the consent, express or implied, of the originator thereof or of the person intended by the originator thereof to receive it, every one who, without the express consent of the originator thereof or of the person intended by the originator thereof to receive it, wilfully

(a) uses or discloses such private communication or any part thereof or the substance, meaning or purport thereof or of any part thereof, or

(b) discloses the existence thereof,

is guilty of an indictable offence and liable to imprisonment for two years.

(2) Subsection (1) does not apply to a person who discloses a private communication or any part thereof or the substance, meaning or purport thereof or of any part thereof or who discloses the existence of a private communication

(a) in the course of or for the purpose of giving evidence in any civil or criminal proceedings or in any other proceedings in which he may be required to give evidence on oath where

the private communication is admissible as evidence under section 178.16 or would be admissible under that section if it applied in respect of the proceedings;

(b) in the course of or for the purpose of any criminal investigation if the private communication was lawfully intercepted;

(c) in giving notice under section 178.16 or furnishing further particulars pursuant to an order under section 178.17;

(d) in the course of the operation of

(i) a telephone, telegraph or other communication service to the public, or

(ii) a department or agency of the Government of Canada,

if the disclosure is necessarily incidental to an interception described in paragraph 178.11 (2) *(c)* or *(d)*; or

(e) where disclosure is made to a peace officer and is intended to be in the interests of the administration of justice. 1973, c.50, s.2.

DAMAGES—No damages where civil proceedings commenced—Judgment may be registered—Moneys in possession of accused may be taken.

178.21 (1) Subject to subsection (2), a court that convicts an accused of an offence under section 178.11 or 178.2 may, upon the application of a person aggrieved, at the time sentence is imposed, order the accused to pay to that person an amount not exceeding $5,000 as punitive damages.

(2) No amount shall be ordered to be paid under subsection (1) to a person who has commenced an action under Part I.1 of the *Crown Liability Act*.

(3) Where an amount that is ordered to be paid under subsection (1) is not paid forthwith, the applicant may, by filing the order, enter as a judgment, in the superior court of the province in which the trial was held, the amount ordered to be paid, and that judgment is enforceable against the accused in the same manner as if it were a judgment rendered against the accused in that court in civil proceedings.

(4) All or any part of an amount that is ordered to be paid under subsection (1) may be taken out of moneys found in the possession of the accused at the time of his arrest, except where there is a dispute as to ownership of or right of possession to those moneys by claimants other than the accused. 1973, c.50, s.2.

ANNUAL REPORT—Information respecting authorizations—Other information—Report to be laid before Parliament—Report by Attorneys General.

178.22 (1) The Solicitor General of Canada shall, as soon as possible after the end of each year, prepare a report relating to

(a) authorizations for which he and agents to be named in the report who were specially designated in writing by him for the purposes of section 178.12 made application, and

(b) authorizations given under section 178.13 for which peace

Section 178.22—*continued*

officers to be named in the report who were specially designated by him for the purposes of that section made application,

and interceptions made thereunder in the immediately preceding year.

(2) The report referred to in subsection (1) shall, in relation to authorizations and interceptions made thereunder, set forth

(a) the number of applications made for authorizations;

(b) the number of applications made for renewal of authorizations;

(c) the number of applications referred to in paragraphs *(a)* and *(b)* that were granted, the number of such applications that were refused and the number of applications referred to in paragraph *(a)* that were granted subject to terms and conditions;

(d) the number of persons identified in an authorization against whom proceedings were commenced at the instance of the Attorney General of Canada in respect of

(i) an offence specified in the authorization,

(ii) an offence other than an offence specified in the authorization but in respect of which an authorization may be given, and

(iii) an offence in respect of which an authorization may not be given;

(e) the number of persons not identified in an authorization against whom proceedings were commenced at the instance of the Attorney General of Canada in respect of

(i) an offence specified in such an authorization,

(ii) an offence other than an offence specified in such an authorization but in respect of which an authorization may be given, and

(iii) an offence other than an offence specified in such an authorization and for which no such authorization may be given,

and whose commission or alleged commission of the offence became known to a peace officer as a result of an interception of a private communication under an authorization;

(f) the average period for which authorizations were given and for which renewals thereof were granted;

(g) the number of authorizations that, by virtue of one or more renewals thereof, were valid for more than thirty days, for more than sixty days, for more than ninety days and for more than one hundred and eighty days;

(h) the offences in respect of which authorizations were given, specifying the number of authorizations given in respect of each such offence;

(i) a description of all classes of places specified in authorizations and the number of authorizations in which each such class of place was specified;

(j) a general description of the methods of interception involved in each interception under an authorization;

(k) the number of persons arrested whose identity became known to a peace officer as a result of an interception under an authorization;

(l) the number of criminal proceedings commenced at the instance of the Attorney General of Canada in which private communications obtained by interception under an authorization were adduced in evidence and the number of such proceedings that resulted in a conviction; and

(m) the number of criminal investigations in which information obtained as a result of the interception of a private communication under an authorization was used although the private communication was not adduced in evidence in criminal proceedings commenced at the instance of the Attorney General of Canada as a result of the investigations.

(3) The report referred to in subsection (1) shall, in addition to the information referred to in subsection (2), set forth

(a) the number of prosecutions commenced against officers or servants of Her Majesty in right of Canada or members of the Canadian Forces for offences under section 178.11 or section 178.2; and

(b) a general assessment of the importance of interception of private communications for the investigation, detection, prevention and prosecution of offences in Canada.

(4) The Solicitor General of Canada shall cause a copy of each report prepared by him under subsection (1) to be laid before Parliament forthwith upon completion thereof, or if Parliament is not then sitting, on any of the first fifteen days next thereafter that Parliament is sitting.

(5) The Attorney General of each province shall, as soon as possible after the end of each year, prepare and publish or otherwise make available to the public a report relating to

(a) authorizations for which he and agents specially designated in writing by him for the purposes of section 178.12 made application, and

(b) authorizations given under section 178.15 for which peace officers specially designated by him for the purposes of that section made application,

and interceptions made thereunder in the immediately preceding year setting forth, with such modifications as the circumstances require, the information described in subsections (2) and (3). 1973, c. 50, s.2.

WRITTEN NOTIFICATION TO BE GIVEN—Exception.

178.23 (1) The Attorney General of the province in which the application was made or the Solicitor General of Canada, as the case may be, shall notify in writing within ninety days next following the period for which the authorization was given the person who was the object of the interception pursuant to the authorization and shall, in a manner prescribed by regulation, certify to the court that issued the authorization that such person has been notified.

(2) Subsection (1) does not apply

(a) in the case of a warrant issued under subsection 16(2) of the *Official Secrets Act*, or

(b) where the Attorney General of the province in which the application is made or the Solicitor General of Canada, as the case may be, certifies within the said ninety days in a manner prescribed by regulations to the judge who granted the authorization that the investigation is continuing and the judge is of the opinion that the interests of justice require that a delay of a determinate reasonable length be granted, in which case the judge may grant a determinate reasonable delay. 1973, c.50, s.2.

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APPENDIX I

CANADIAN BILL OF RIGHTS -

APPENDIX III

CANADIAN BILL OF RIGHTS

An Act for the Recognition and Protection of Human Rights and Fundamental Freedoms

8-9 Elizabeth II, c. 44 (Canada)

[Assented to 10th August 1960]

Preamble

The Parliament of Canada, affirming that the Canadian Nation is founded upon principles that acknowledge the supremacy of God, the dignity and worth of the human person and the position of the family in a society of free men and free institutions;

Affirming also that men and institutions remain free only when freedom is founded upon respect for moral and spiritual values and the rule of law;

And being desirous of enshrining these principles and the human rights and fundamental freedoms derived from them, in a Bill of Rights which shall reflect the respect of Parliament for its constitutional authority and which shall ensure the protection of these rights and freedoms in Canada:

Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

PART I

BILL OF RIGHTS

Recognition and declaration of rights and freedoms

1. It is hereby recognized and declared that in Canada there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and

APPENDICE III

DÉCLARATION CANADIENNE DES DROITS

Loi ayant pour objets la reconnaissance et la protection des droits de l'homme et des libertés fondamentales

8-9 Elizabeth II, c. 44 (Canada)

[Sanctionnée le 10 août 1960]

Préambule

Le Parlement du Canada proclame que la nation canadienne repose sur des principes qui reconnaissent la suprématie de Dieu, la dignité et la valeur de la personne humaine ainsi que le rôle de la famille dans une société d'hommes libres et d'institutions libres;

Il proclame en outre que les hommes et les institutions ne demeurent libres que dans la mesure où la liberté s'inspire du respect des valeurs morales et spirituelles et du règne du droit;

Et afin d'expliciter ces principes ainsi que les droits de l'homme et les libertés fondamentales qui en découlent, dans une Déclaration de droits qui respecte la compétence législative du Parlement du Canada et qui assure à sa population la protection de ces droits et de ces libertés,

En conséquence, Sa Majesté, sur l'avis et du consentement du Sénat et de la Chambre des communes du Canada, décrète:

PARTIE I

DÉCLARATION DES DROITS

Reconnaissance et déclaration des droits et libertés

1. Il est par les présentes reconnu et déclaré que les droits de l'homme et les libertés fondamentales ci-après énoncés ont existé et continueront à exister pour tout individu au Canada quels que soient sa race, son origine

fundamental freedoms, namely,

(*a*) the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law;

(*b*) the right of the individual to equality before the law and the protection of the law;

(*c*) freedom of religion;

(*d*) freedom of speech;

(*e*) freedom of assembly and association; and

(*f*) freedom of the press.

nationale, sa couleur, sa religion ou son sexe:

a) le droit de l'individu à la vie, à la liberté, à la sécurité de la personne ainsi qu'à la jouissance de ses biens, et le droit de ne s'en voir privé que par l'application régulière de la loi;

b) le droit de l'individu à l'égalité devant la loi et à la protection de la loi;

c) la liberté de religion;

d) la liberté de parole;

e) la liberté de réunion et d'association, et

f) la liberté de la presse.

APPENDIX I

CRIMINAL CODE SECTION II

"court of appeal" means

(*a*) in the Province of Ontario, the Court of Appeal,

(*b*) in the Province of Quebec, the Court of Queen's Bench, appeal side,

(*c*) in the Province of Nova Scotia, the Appeal Division of the Supreme Court,

(*d*) in the Province of New Brunswick, the Court of Appeal, otherwise known as the Appeal Division of the Supreme Court,

(*e*) in the Province of British Columbia, the Court of Appeal,

(*f*) in the Province of Prince Edward Island, the Supreme Court,

(*g*) in the Province of Manitoba, the Court of Appeal,

(*h*) in the Province of Saskatchewan, the Court of Appeal,

(*i*) in the Province of Alberta, the Appellate Division of the Supreme Court,

(*j*) in the Province of Newfoundland, the Supreme Court, constituted by two or more of the judges thereof,

(*k*) in the Yukon Territory, the Court of Appeal, and

(*l*) in the Northwest Territories, the Court of Appeal;

"court of criminal jurisdiction" means

(*a*) a court of general or quarter sessions of the peace, when presided over by a superior court judge or a county or district court judge, or in the cities of Montreal and Quebec, by a municipal judge of the city, as the case may be, or a judge of the sessions of the peace,

(*b*) a magistrate or judge acting under Part XVI, and

(*c*) in the Province of New Brunswick, the County Court of New Brunswick;

"superior court of criminal jurisdiction" means

(*a*) in the Province of Ontario, the Supreme Court,

(*b*) in the Province of Quebec, the Court of Queen's Bench (Crown side),

(*c*) in the Provinces of Nova Scotia, New Brunswick, Prince Edward Island, Alberta and Newfoundland respectively, the Supreme Court,

(*d*) in the Province of British Columbia, the Supreme Court or the Court of Appeal,

(*e*) in the Provinces of Manitoba and Saskatchewan respectively, the Court of Appeal or the Court of Queen's Bench,

(*f*) in the Yukon Territory, the Supreme Court, and

(*g*) in the Northwest Territories, the Supreme Court;

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J. James Bambury

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Hon. Jacob Mishler,
United States District Judge
Eastern District of New York
225 Cadman Plaza
Brooklyn, New York 11201

Re: U.S.A. v. Frank Cotroni

Honorable Sir:

Enclosed herewith is one of several briefs which shall be forthcoming, this covering the law as to the requirement of a proper foundation as a precondition to the admissibility of tape recordings.

I forward this to you at this time to support the defendant's position concerning the inadmissibility of tape recordings to be offered herein.

Respectfully,

john nicholas iannuzzi

john nicholas iannuzzi

City of New York
December 13, 1974

cc: Thomas Puccio, Esq.

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

Docket No. 73 Cr. 898

UNITED STATES OF AMERICA,

vs.

FRANK COTRONI, et.al.,

Defendants.

DEFENDANT COTRONI'S MEMORANDUM OF LAW AS TO THE REQUIREMENT OF A PROPER FOUNDATION AS A PRE-CONDITION TO THE ADMISSIBILITY OF TAPE RECORDINGS

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

Docket No. 73 Cr. 898

UNITED STATES OF AMERICA,

vs.

FRANK COTRONI, et. al.,

Defendants.

DEFENDANT COTRONI'S MEMORANDUM OF LAW AS TO THE REQUIREMENT OF A PROPER FOUNDATION AS A PRE-CONDITION TO THE ADMISSIBILITY OF TAPE RECORDINGS

Preliminary Statement

This memorandum of law is submitted to aid the Court in its analysis and determination of the legal problems presented by the tape recordings which the Government intends to offer in evidence in the present case. At this writing, we understand that some, if not all, of these tape recordings are one or two generations removed from the original recordings. In addition, it has not yet been established whether it is

possible to ascertain the names of all persons who had access to the tape recording equipment, the tape recording installation, and the tape recordings themselves. It is to problems such as these that this memorandum is directed.

The Requirement of Authentication

The basically and universally accepted rule is set forth at 17 Am. Jur. Proof of Facts, p. 20:

> "It is extremely important that the exact location and custody of the original tape be determined at every moment from the time it was originally recorded to the time it is submitted for evidence; a tape can be copied from a heavily altered original in such a way that no marks of tampering appear."

The article goes on to explain the ease with which a tape recording can be altered, and concludes:

> "A thorough examination of a questioned tape entails an analysis by a sound laboratory equiped with microscopic, spectroscopic, oscillographic, and other electronic equipment capable of detecting inconsistencies or alterations inaudible to the human ear."

See also: Hearings on Wiretapping, Eavesdropping and the Bill of Rights, Senate Subcommittee on Constitutional Rights, 85th and 86th Congress, testimony of Samuel Dash, part III, p. 509. In his testimony, Mr. Dash describes the techniques of editing and dubbing that make it possible for a speech to be edited in such a manner that motherhood and apple pie are transformed into a call for rape and pillage.

We respectfully submit that where there is a

break in the chain of custody or where the prosecution fails to establish the chain of custody, and all those who have had the tape in their possession have not testified to the lack of alteration (whether intentional or accidental), then the tape has not been properly authenticated and is inadmissible in evidence.

In United States v. McKeever, 169 F. Supp. 426 (SDNY, 1958), Judge Herlands held:

> "A review of the authorities leads to the conclusion that, before a sound recording is admitted into evidence, a foundation must be established by showing the following facts:
>
> * * *
>
> (3) That the recording is authentic and correct.
>
> (4) That changes, additions or deletions have not been made in the recording.
>
> (5) That the recording has been preserved in a manner that is shown to the court." (169 F. Supp. at 430).
>
> * * *
>
> The Court also noted:
>
> "Furthermore, in the present case, the reliability of the resulting recording must be established before the recording itself can be admitted. The "credibility" so to speak, of the recording itself, its accuracy and completeness, are left to the trial judge to determine as an initial or preliminary question of fact. The functional importance of foundation proof of accuracy and authenticity is highlighted by the obvious circumstances that the mechanical, physical recording cannot be cross examined." (169 F. Supp. 426, at 431 fn. 1).

In Todisco v. United States, 298 F. 2d 208 (9th Cir., 1961), cert. denied, 82 Sup. Ct. 602 (1962), a recording was admitted into evidence upon the testimony of one of the participants in the conversation (an undercover federal agent), that the recording was accurate (298 F. 2d, at 211).

In McKeeman v. Commercial Credit Equipment Corp., 320 F. Supp. 938 (D. Neb., 1970), a civil case, the Court noted that even a more stringent foundation must be established in a criminal case before a tape recording may be introduced into evidence:

> "Defendant places considerable reliance upon criminal cases in urging [that the recording had not properly been preserved]. While not deciding the precise issue of differing standards, it is worth noting that a much stricter foundation would probably be followed in a criminal case, especially where the recording dealt with an alleged confession, than it would in a civil case such as the one at bar. Indeed, such conclusion can be gleaned from Solomon, Inc. v. Edgar, 92 Ga. App. 207, 88 Southeast 2d 167 (1955).* * *"
>
> See also: Annotation at 58 ALR 2d 1024.

In People v. Sacchitella, 31 A.D. 2d 180, 295 N.Y. Supp. 2d 880 (1st Dept., 1968), the Court reversed a judgment of conviction stating:

> "* * * To them [the jury] the tape must have seemed to be powerful confirmation of the police informers' testimony and defendants' guilt, and thus might well have constituted the most damaging piece of evidence presented by the prosecution.
>
> The authenticity of the recording was a critical issue upon the trial and the error committed by the Court in permitting it

> in evidence went to the heart of the prosecution's case. Under the circumstances, a new trial is required in the interests of justice."

See also: People v. Velella, 216 N.Y. Supp. 2d 488 (Gen. Sess., N.Y. Co., 1961).

Conclusion

We submit that, in light of the fact that automatic recording equipment was used in the present case, and particularly in view of the admitted destruction of the actual tape recordings, it is incumbent upon the prosecution to authenticate those recordings which it intends to offer in evidence by establishing: (1) the reliability of the process and the equipment which was used to first create the recordings and later to copy or edit those recordings; (2) the security of the tape recordings themselves following their creation, i.e., is there a definite record of all those persons who had access to the recordings, and will each such person attest under oath that he did not modify the recordings intentionally or accidentally?

A well known authority has commented: "The foundation on which rests the necessity of authentication is not any artificial principle of Evidence, but an inherent logical necessity." 7 Wigmore §2129, p. 564. [Emphasis in original].

Respectfully submitted,

JOHN NICHOLAS IANNUZZI
Attorney for Defendant

Henry J. Boitel,
of Counsel

A 146

Law Offices Of

BAMBURY, IANNUZZI, IANNUZZI, AND BAMBURY

Joseph A. Bambury (1925-1972)
Nicholas P. Iannuzzi (1930-1972)
John Nicholas Iannuzzi
J. James Bambury

233 Broadway – City of New York 10007 – Barclay 7-9595
Cable Address: NUMERUNO, New York

Rome: Via Leone Arv. Prof. Mario Fiore
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FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
APR 14 1975
TIME A.M.
P.M.

Thomas Puccio, Esq.
Asst. U.S. Attorney
225 Cadman Plaza
Brooklyn, New York 11201

Re: Frank Cotroni

Dear Mr. Puccio:

I am writing this letter to you to request that you make Claude LaVallee available for further testimony on the adjourned date of the hearing, to wit, December 27, 1974. Moreover, at that time, it will also be necessary for defense counsel to have available any apartment leases and any rental agreements with the Telephone Company entered into by the Montreal Police Department in furtherance of its plan to tap certain telephone wires in their city.

In addition, it shall be necessary to have the records of the Bell Telephone Company relative to repairs of the lines and terminal boxes into which the Police Department placed their electronic surveillance devices. These records shall be necessary, as well as the repair men who made such repairs, not only for the purpose of determining damage, if any, to Telephone Co. property, but for other, more significant purposes.

I realize that Canadian Bell Telephone may be reluctant to forward these records to the United States; and, I am sure, Bell would be even more reluctant to send one, or several, of its repairmen here. In which case, I believe it would be essential, and in keeping with Judge Mishler's directive, if we arrange immediately for depositions in Canada which would make such testimony and records available for our proceeding.

Very truly yours,

john nicholas iannuzzi

john nicholas iannuzzi

New York City
December 23, 1974
cc: Jdge Jacob Mishler

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A 147

ADDRESS REPLY TO
UNITED STATES ATTORNEY
AND REFER TO
INITIALS AND NUMBER

GT:TPP:lag
#733,823

United States Department of Justice

UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK
FEDERAL BUILDING
BROOKLYN, N. Y. 11201

December 23, 1974

Honorable Jacob Mishler
Chief Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Frank Cotroni
Criminal Docket No. 73-CR-898

Dear Judge Mishler:

As you are aware, we have supplied all defense counsel in the above-captioned case both logs and transcripts of conversations pertaining to the so-called Vegas projects. This includes, with the exception of certain conversations which will be submitted to the Court for in camera inspection, both relevant and irrevelant conversations intercepted between December 1, 1970 and January 31, 1971. Further, it is my understanding that there are no other intercepted conversations pertaining to this case which have not been made available to us by the Canadian Government and in turn made available by us to defense counsel. However, as the materials I have turned over to defense counsel and the Court indicate, the Vegas projects were in operation before December 1, 1970 and after January 31, 1971. During these periods many other conversations were intercepted which I am not presently privy to. Although I have been assured that these other conversations have no bearing on the above-captioned case, I have been informed that they are relevant to matters presently being investigated by the Quebec Police Commission. Therefore, in the opinion of the Canadian Government, a public disclosure of all the Vegas tapes at this time would be detrimental to an investigation of these other matters.

In order that the Court might be satisfied that the tape recordings, logs and transcripts of conversations that are not being turned over by the Canadian Government have no bearing on the above-captioned case, Mr. Patenaude of the Quebec Police Force has authorized me to offer Your Honor the opportunity to

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examine the logs and transcripts and listen to the tape recordings that are not being turned over at the office of the Quebec Police Force in Montreal. In the event that Your Honor wishes to do this, arrangements can be made through the undersigned.

I believe it is significant to note that Mr. Leo Maranda, the Canadian attorney who is assisting defense counsel in the above-captioned matter, was not only an attorney for Mr. Cotroni during the extradition proceedings in Montreal, but also presently represents Vincenzo Cotroni, a brother of Frank Cotroni, in connection with an organized crime inquiry in Canada. Furthermore, Mr. Maranda presently represents Mrs. Frank Dasti in a civil siut being brought against members of the Quebec Police Force as a result of their electronic surveillance activities. I am informed by Mr. L.-P. Landry, attorney for the Attorney General of Canada, that Mr. Maranda, as attorney for Vincenzo Cotroni, unsuccessfully made motions in Canada pertaining to the Vegas projects which bear a strong resemblance to the motions now being made by Mr. Iannuzzi in this case. In addition, Mr. Landry further informs me that on December 18, 1974, Mr. Maranda subpoenaed Corporal Bernard Couture, a prospective witness at the hearing before Your Honor, to appear before a Canadian court with all originals and copies of the tapes in all the Vegas Projects. Since compliance with this subpoena would compromise current investigations in Canada as well as cause the tapes to be unavailable for trial before Your Honor on January 6, 1974, the Canadian Government has opposed the subpoena before the court in Montreal.

Very truly yours,

DAVID G. TRAGER
United States Attorney

By: Thomas P. Puccio
Thomas P. Puccio
Assistant U. S. Attorney
Chief, Criminal Division

cc: John Nicholas Iannuzzi, Esq.
233 Broadway, Suite 4902
New York, New York 10007

Max Fructman, Esq.
250 West 57th Street
New York, New York 10019

Michael Klar, Esq.
1501 Franklin Avenue
Mineola, New York 11501

A 149

GT:TPP:lag

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
DEC 24 1974
TIME A.M.
P.M.

December 23, 1974

John Nicholas Iannuzzi, Esq.
233 Broadway, Suite 4902
New York, New York 10007

Re: United States v. Frank Cotroni
Criminal Docket No. 73-CR-898

Dear Mr. Iannuzzi:

Reference is made to your letters of November 27 and December 5, 1974 pertaining to the above-captioned case.

In your letter of November 27, 1974 you request various items pertaining to the Canadian wiretaps. The following is submitted in response to your numbered requests:

1. You have been supplied with logs and transcripts of conversations in French and English pertaining to Vegas Projects 1B, PT, 3, 5, 7, 8, 9, 11 and 12. English translations have also been supplied for all logs and transcripts that are pertinent to the above-captioned case. We will not supply English translations of logs and transcripts that have no relevance to the above-captioned matter. However, since you indicated on November 29, 1974 to Judge Mishler that you have retained the services of a translator, we expect to be provided with any translations prepared at your direction which differ from those supplied by the Government.

2.(a)-(g) All persons in the "chain of custody" to which you refer in this request have already appeared as witnesses or will be made available to be called. This will include Herve Patenaude, Bernard Couture and Claude Aube of the Quebec Police Force; Claude Lavalee, former member of the Quebec Police Force; Kevin Gallagher of the Drug Enforcement Administration; and Claude Sauve of the Royal Canadian Mounted Police. The register of persons who had access to the copy tapes is not in existence.

(58)

I am informed by Mr. Patenaude that copies of the tapes for all the Vegas Projects have been made available to the Quebec Police Commission in connection with a public inquiry into organized crime in the Province of Quebec. We do not expect to call nor do we believe it is necessary to call as witnesses members of the Quebec Police Commission who may have listened to the tapes.

3. It is our understanding that there are no original tapes available from which copies can be made.

4. We expect to call witnesses on December 27, 1974 who will testify concerning the destruction of the original tapes.

5. We have supplied you with copies of tape recordings of pertinent conversations which we intend to offer into evidence at trial. These copies were made from master tapes (dubs) which are still in the possession of the Canadian Government but will be produced at trial. In addition, Mr. Patenaude has indicated that he will permit defense experts to examine the pertinent portions of the master tapes at his office in Montreal prior to the trial. Tape recordings of conversations which are not pertinent to the above-captioned case have not been supplied to us by the Canadian Government; therefore, they cannot be made available to you. The Canadian Government, however, has offered to allow Judge Mishler to listen to all the tapes in all the Vegas Projects at the office of the Quebec Police Force in Montreal, Canada (see attached letter to Judge Mishler).

6. Mr. Patenaude has indicated that it is impossible to produce for examination the automatic machines used in connection with the Vegas Projects.

7. Mr. Patenaude has similarly indicated that compliance with this request would be impossible at this time.

8. With the exception of certain logs of conversations which will be delivered to the Court for in camera inspection at the request of the Canadian Government, all logs and transcripts which have been supplied to the United States Government have already been made available to defense counsel. This would include all logs and transcripts

of pertinent conversations as well as logs of conversations which are not pertinent between December 1, 1970 and January 31, 1971. No other material pertaining to the Vegas Projects has been received by us and, therefore, cannot be made available to you.

You will note that many of the requests made in your letter of November 27, 1974 are reiterated in your letter of December 5, 1974. To the extent that your letter of December 5, 1974 contains new requests which are not answered by the above responses to your November 27th letter, you are advised of the following:

1. Mr. Gallagher's investigative reports will be made available to you for use at the trial of this case pursuant to Title 18, Section 3500. If possible they will be made available in advance of the trial and certainly before he is called to testify. Investigative reports prepared by Canadian law enforcement agencies have not been made available to us, and therefore cannot be produced.

2. Mr. Patenoude has informed me that the bills or invoices received from the telephone company for the Vegas Projects are no longer in existence.

If you have any questions concerning the above, please contact me as soon as possible at telephone number 596-5300.

Very truly yours,

DAVID G. TRAGER
United States Attorney

By: _____
Thomas P. Puccio
Assistant U. S. Attorney
Chief, Criminal Division

cc: Max Fructman, Esq.
250 West 57th Street
New York, New York 10019

Michael Klar, Esq.
1501 Franklin Avenue
Mineola, New York 11501

Clerk of the Court
Eastern District of New York

DGT:TPP:lag
F.#733,823

A 152

December 23, 1974

Honorable Jacob Mishler
Chief Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Frank Cotroni
Criminal Docket No. 73-CR-898

Dear Judge Mishler:

As you are aware, we have supplied all defense counsel in the above-captioned case both logs and transcripts of conversations pertaining to the so-called Vegas projects. This includes, with the exception of certain conversations which will be submitted to the Court for in camera inspection, both relevant and irrevelant conversations intercepted between December 1, 1970 and January 31, 1971. Further, it is my understanding that there are no other intercepted conversations pertaining to this case which have not been made available to us by the Canadian Government and in turn made available by us to defense counsel. However, as the materials I have turned over to defense counsel and the Court indicate, the Vegas projects were in operation before December 1, 1970 and after January 31, 1971. During these periods many other conversations were intercepted which I am not presently privy to. Although I have been assured that these other conversations have no bearing on the above-captioned case, I have been informed that they are relevant to matters presently being investigated by the Quebec Police Commission. Therefore, in the opinion of the Canadian Government, a public disclosure of all the Vegas tapes at this time would be detrimental to an investigation of these other matters.

In order that the Court might be satisfied that the tape recordings, logs and transcripts of conversations that are not being turned over by the Canadian Government have no bearing on the above-captioned case, Mr. Patenaude of the Quebec Police Force has authorized me to offer Your Honor the opportunity to

examine the logs and transcripts and listen to the tape recordings that are not being turned over at the office of the Quebec Police Force in Montreal. In the event that Your Honor wishes to do this, arrangements can be made through the undersigned.

I believe it is significant to note that Mr. Leo Maranda, the Canadian attorney who is assisting defense counsel in the above-captioned matter, was not only an attorney for Mr. Cotroni during the extradition proceedings in Montreal, but also presently represents Vincenzo Cotroni, a brother of Frank Cotroni, in connection with an organized crime inquiry in Canada. Furthermore, Mr. Maranda presently represents Mrs. Frank Dasti in a civil siut being brought against members of the Quebec Police Force as a result of their electronic surveillance activities. I am informed by Mr. L.-P. Landry, attorney for the Attorney General of Canada, that Mr. Maranda, as attorney for Vincenzo Cotroni, unsuccessfully made motions in Canada pertaining to the Vegas projects which bear a strong resemblance to the motions now being made by Mr. Iannuzzi in this case. In addition, Mr. Landry further informs me that on December 18, 1974, Mr. Maranda subpoenaed Corporal Bernard Couture, a prospective witness at the hearing before Your Honor, to appear before a Canadian court with all originals and copies of the tapes in all the Vegas Projects. Since compliance with this subpoena would compromise current investigations in Canada as well as cause the tapes to be unavailable for trial before Your Honor on January 6, 1975, the Canadian Government has opposed the subpoena before the court in Montreal.

Very truly yours,

DAVID G. TRAGER
United States Attorney

By: _____
Thomas P. Puccio
Assistant U. S. Attorney
Chief, Criminal Division

cc: John Nicholas Iannuzzi, Esq.
233 Broadway, Suite 4902
New York, New York 10007

Max Fructman, Esq.
250 West 57th Street
New York, New York 10019

Michael Klar, Esq.
1501 Franklin Avenue
Mineola, New York 11501

TPP:lag
F.#733,823

A 154

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA

- against -

FRANK COTRONI
FRANK DASTI and
PAUL ODDO,

Defendants.

- - - - - - - - - - - - - - - - - X

AFFIDAVIT IN OPPOSITION

Criminal Docket No.
73-CR-898

FILED
IN CLERK'S OFFICE
U.S DISTRICT COURT E.D. N.Y.
APR 14 1975
TIME A.M.
P.M.

STATE OF NEW YORK)
COUNTY OF KINGS) SS:
EASTERN DISTRICT OF NEW YORK)

THOMAS P. PUCCIO, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney and Chief of the Criminal Division in the Office of David G. Trager, United States Attorney for the Eastern District of New York.

2. I am in charge of the prosecution of the above captioned case and submit this affidavit in opposition to the motion of defendants Cotroni and Dasti to dismiss the indictment. Responses to various other motions made by the defendants appear in an accompanying memorandum of law.

3. The defendants move to dismiss the indictment, alleging that "the method of selection of the Grand Jury for the Eastern District of New York which returned the instant indictment was illegal, violated due process, and was contrary to the Constitution of the United States" and that "among other improprieties in such selection was that the method employed resulted in the exclusion and/or illegal reduction in the number empanelled from certain ethnic and religious groups and from persons between 18 and 21 years of age".

It is respectfully submitted that defendants' contentions are erroneous. Records of the United States Attorney's Office indicate that the above indictment was returned by the October 1973 Regular Grand Jury. I am informed by Mr. John Lupiano, Jury Clerk of the Eastern District of New York, that the October 1973 Regular

(12)

Grand Jury was selected from the October 1, 1973 jury panel pursuant to the Amended Plan of the United States District Court for the Eastern District of New York for the Random Selection of Grand and Petit Juries Pursuant to Instructions of a Reviewing Panel at a Meeting Held at Lake Placid, New York on September 12, 1968 (A copy of the Plan is attached as EXHIBIT A). In light of the Twenty Sixth Amendment, the above Eastern District Plan was amended to remove the disqualification of persons between 18 and 21 years of age. (SEE EXHIBIT B) According to Mr. Lupiano, the October 1, 1973 panel, in conformity with the above amendment, was the first Eastern District Panel to be selected from the 1972 voter registration lists which included voters between 18 and 21 years of age. The Plan does not permit nor is your deponent aware of any exclusion and/or illegal reduction in the number of jurors empanelled based upon ethnic or religious classifications, and the defendant has offered no specific instances of exclusion and/or reduction or a pattern of exclusion and/or reduction.

4. Defendants further contend that the indictment should be dismissed because evidence obtained as a result of illegal searches and electronic surveillances was presented to the Grand Jury which returned the indictment. The evidence presented to the Grand Jury (as disclosed by the Grand Jury Minutes previously supplied to the defendants) consisted of the testimony of co-conspirator witness, Giuseppe Catania, and two Drug Enforcement Administration Special Agents. To your deponent's knowledge, none of the evidence presented to the Grand Jury was based directly or indirectly upon unlawful searches or electronic surveillance conducted by or at the direction of United States Agents. Moreover, your deponent has caused a search to be made of the files of the appropriate United States Government agencies in order to determine whether the defendants were the subject of electronic surveillances by these agencies or overheard during electronic surveillances directed at other persons. A similar check is being made at your deponent's direction to determine whether the defendants were the subject of searches conducted by United States

Government agencies. The results of the above will be included in a forthcoming affidavit.

5. Defendants further allege that prejurious testimony was presented to the Grand Jury which returned the indictment herein and that therefore the indictment should be dismissed. Your deponent presented all the evidence to the Grand Jury pertaining to this case and is not aware of any prejurious testimony elicited. Moreover, defendants cite no specific examples of perjury in their motion papers.

6. The defendants further allege that the indictment should be dismissed because of various alleged improprieties in the presentation of evidence to the Grand Jury which returned the above indictment. However, the procedure used by the Grand Jury in returning the indictment was not as defendants suggest in their motion papers. Your deponent questioned certain witnesses before the Grand Jury and thereafter delivered to the Grand Jury Foreman a proposed typewritten indictment signed in the name of the United States Attorney. The Grand Jury deliberated in private and the Foreman thereafter handed up the indictment to the Court. Only your deponent, the witness who was testifying, the stenographer and the Grand Jury were present during the taking of testimony and, to your deponent's knowledge, only the Grand Jurors were present during the deliberations and voting.

In light of the foregoing and the accompanying memorandum of law, it is respectfully urged that the motion to dismiss the indictment be in all respects denied.

Thomas P. Puccio

THOMAS P. PUCCIO
Assistant U. S. Attorney
Chief, Criminal Division

Sworn to before me this
31st day of December 1974

Notary Public, New York

Commissioned by
Commission Expires March 30, 1976

FILED
SEP 19 1968
SECOND CIRCUIT

" AMENDED " SEPTEMBER 18, 1968

PLAN OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK FOR THE RANDOM SELECTION OF GRAND AND PETIT JURORS, PURSUANT TO INSTRUCTIONS OF THE REVIEWING PANEL AT A MEETING HELD AT LAKE PLACID, NEW YORK ON SEPTEMBER 12, 1968

Pursuant to the Jury Selection and Service Act of 1968, Public Law 90-274 (the Act), the following plan is hereby adopted by this court, subject to approval by a reviewing panel and to such rules and regulations as may be adopted from time to time by the Judicial Conference of the United States.

Section 1. Applicability of Plan. This plan is applicable to the Eastern District of New York, which consists of the counties of: Kings, Nassau, Queens, Richmond and Suffolk.

Section 2. Policy. All litigants in Federal courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross.section of the community. All citizens shall have the opportunity to be considered for service on grand and petit juries and shall have an obligation to serve as jurors when summoned for that purpose. No citizen shall be excluded from service as a grand or petit juror on account of race, color, religion, sex, national origin, or economic status.

EXHIBIT A

Section 3. Management and Supervision of Jury Selection Process. The clerk of the court shall manage the jury selection process, under the supervision and control of the Chief Judge.

Section 4. Random Selection from Voter Lists. Voter registration lists represent a fair cross section of the community in the Eastern District of New York. Accordingly, names of grand and petit jurors serving on or after the effective date of this plan shall be selected at random from the voter registration lists of all the counties within the Eastern District of New York.

The clerk shall make the random selection of names in one of the following ways:

(1) A starting number from one to 100 shall be drawn by lot, and that name shall be selected from the voter registration list of each county along with each 100th name (or such other number as the clerk in consultation with the Chief Judge determines will be needed to supply jurors sufficient for two years) thereafter, measuring the name-interval in any convenient way reasonably approximating the number 100 or other selected number. Thus, if the starting number drawn is 19 and each

100th name is chosen, the 19th, 119th, 219th, etc., names shall be picked from the voter registration lists of each county.

(2) A properly programmed electronic data processing system designed to achieve random sampling or selection by every 100th name (or other number as the clerk in consultation with the Chief Judge determines will be needed to supply jurors sufficient for two years) may be utilized for any or all counties within the district, at the option of the clerk in consultation with the Chief Judge.

No county shall have drawn a number of names substantially greater, as compared to those drawn in other counties, than its proportion of registered voters to the registered voters in the district.

Section 5. Master Jury Wheels. The master jury wheel shall consist of file drawers, or of the registration lists with names selected under Section 4 marked, or, in the discretion of the clerk in consultation with the Chief Judge, a properly programmed electronic data processing system, devices similar in purpose and function to a wheel. The names of all persons randomly selected from the voter registration lists of the counties shall be thus placed in the master jury wheel. The

minimum number of names to be placed initially in the master jury wheel shall be fifteen thousand names.

The Chief Judge may order additional names to be placed in the master jury wheel using the same system described in section 4 from time to time as necessary. The master jury wheel shall be emptied and refilled between July 1 and September 1 of every even numbered year beginning in 1970.

Section 6. Completion of Juror Qualification Form. From time to time as directed by the Chief Judge, the clerk shall publicly draw at random from the master jury wheel the names of as many persons as may be required for jury service. The clerk shall prepare an alphabetical list of the names drawn.

If mailing of the juror qualification forms can be accomplished within two months, the clerk may, with the consent of the Chief Judge, draw the entire list on the master jury wheel at one time.

The clerk, at such times as shall be practicable and consistent with his other duties and those of his staff, shall mail to every person whose name is drawn from the master

wheel a juror qualification form accompanied by instructions to fill out and return the form, duly signed and sworn, to the clerk by mail within ten days.

In any case in which it appears that there is an omission, ambiguity, or error in a form, the clerk shall return the form with instructions to the person to make such additions or corrections as may be necessary and to return the form to the clerk within ten days. Any person who fails to return a completed juror qualification form as instructed may be summoned by the clerk forthwith to appear before the clerk to fill out a juror qualification form.

A person summoned to appear because of failure to return a juror qualification form as instructed who personally appears and executes a juror qualification form before the clerk, may, in the discretion of the court, except where his prior failure to execute and mail such form was willful, be entitled to receive for such appearance the same fees and travel allowances paid to jurors. At the time of his appearance for jury service, any person may be required to fill out another juror qualification form in the presence of the clerk or the court at which time, in such cases as it appears warranted, the person may be questioned, but only with regard to his responses to questions contained on the form. Any information thus acquired by the clerk or a judge of the court may be noted on the juror qualification form and transmitted to the Chief Judge.

Section 7. Excuses on Individual Request. The court hereby finds that jury service by members of the following occupational classes or groups of persons would entail undue hardship or extreme inconvenience, and the excuse of such members is not inconsistent with the Act, and shall be granted upon individual request:

(1) Persons over 70 years of age.

(2) Actively engaged members of the clergy.

(3) Women who are responsible for the day-to-day care of a child under the age of sixteen years.

(4) Actively practicing attorneys, physicians, dentists, and nurses.

(5) Persons who have served as a grand or petit juror in a state or federal court within the preceding two years.

(6) School teachers in public, parochial, or private schools actively teaching.

(7) Sole proprietors of businesses.

(8) Any person who resides more than 25 miles from the place of holding court if called to serve on a petit jury.

(9) Any person who resides more than 25 miles from 225 Cadman Plaza East, Brooklyn, New York, if so called to serve on a grand jury.

Section 8. Exemption from Jury Service. The district court hereby finds that exemption of the following groups of persons or occupational classes is in the public interest and would not be inconsistent with the Act and accordingly members of such groups are exempt from jury service:

(1) Members in active service in the Armed Forces of the United States.

(2) Active full-time paid members of a fire or police department.

(3) Public officers in the executive, legislative, or judicial branches of the Government of the United States, or any State, district, territory, or possession or subdivision thereof, who are actively engaged in the performance of official duties. Public officer shall mean a person who is either elected to public office or who is directly appointed by a person elected to public office.

Section 9. Determination of Qualifications, Excuses, and Exemptions. The Chief Judge, on his initiative or upon recommendation of the clerk, shall determine solely on the basis of information provided on the juror qualification form and other competent evidence whether a person is unqualified for, or exempt, or to be excused from jury service. The clerk shall enter such determination in the space provided

on the juror qualification form and the list of names drawn from the master jury wheel. If a person did not appear in response to a summons, this fact shall be noted on the list.

In making the determination the Chief Judge shall deem any citizen qualified to serve on grand and petit juries in the district court unless he--

(1) is under 21 years of age;

(2) has not resided within the district for one year;

(3) is unable to read, write, and understand the English language well enough to fill out satisfactorily the juror qualification form;

(4) is unable to speak the English language;

(5) is incapable, by reason of mental or physical infirmity, to render satisfactory jury service; or

(6) has a charge pending against him for the commission of, or has been convicted in a State or Federal court of record of, a crime punishable by imprisonment for more than one year and his civil rights have not been restored by pardon or amnesty.

Section 10. Limitation on Disqualifications, Exclusions, Excuses or Exemptions. Except as provided by law or this plan, no person or class of persons shall be disqualified, excluded, excused, or exempt from service as jurors:

Provided, That any person summoned for jury service may be (1) excused by the court, upon a showing of undue hardship or extreme inconvenience, for such period as the court deems necessary, at the conclusion of which such person shall be summoned again for jury service, or (2) excluded by the court on the ground that such person may be unable to render impartial jury service or that his service as a juror would be likely to disrupt the proceedings, or (3) excluded upon peremptory challenge as provided by law, or (4) excluded pursuant to the procedure specified by law upon a challenge by any party for good cause shown, or (5) excluded upon determination by the court that his service as a juror would be likely to threaten the secrecy of the proceedings, or otherwise adversely affect the integrity of jury deliberations. No person shall be excluded under clause (5) of this section unless a judge, in open court, determines that exclusion is warranted and that exclusion of the person will not be inconsistent with law.

The number of persons excluded under clause (5) of this section shall not exceed one per centum of the number of persons who return executed jury qualification forms during the period, specified in this plan, between two consecutive fillings of the master jury wheel. The names of persons excluded under clause (5) of this section together with detailed explanations for the exclusions, shall be forwarded immediately to the judicial council of the second circuit, which shall

have the power to make any appropriate order, prospective or retroactive, to redress any misapplication of clause (5) of this section but otherwise exclusions effectuated under such clause shall not be subject to challenge under the provisions of the Act. Any person excluded from a particular jury under clause (2), (3), or (4) of this section shall be eligible to sit on another jury if the basis for his initial exclusion would not be relevant to his ability to serve on such other jury.

Whenever a person is disqualified, excused, exempt, or excluded from jury service, the clerk shall note in the space provided on his juror qualification form or on the juror's card drawn from the qualified jury wheel the specific reason therefor.

Section 11. Qualified Jury Wheel. The clerk shall maintain a qualified jury wheel in the form of file drawers or an electronic data processing system or some equivalent. He shall place in such wheel the names of all persons drawn from the master jury wheel who are determined to be qualified as jurors and not exempt or excused pursuant to this plan.

Section 12. Publication of Names Drawn from Qualified Juror Wheel. Names drawn from the qualified jury wheel shall not be made available to the public until the jurors have been summoned and have appeared at the courthouse, provided that the Chief Judge may order the names to be kept confidential in a case or cases when the interests of justice so require.

Section 13. Assignment to Panels. From time to time, the clerk shall publicly draw at random from the qualified jury wheel such number of names of persons as may be required for assignment to grand and petit jury panels. The clerk shall prepare a separate list of names of persons assigned to each grand and petit jury panel.

The clerk shall assign persons whose names have been drawn from the qualified jury wheel to grand and petit panels by random selection. No separate group shall be assigned in advance to grand jury or petit jury duties but jurors shall be drawn from the qualified jury wheel for these duties as required from month to month. No separate group shall be assigned in advance to petit jury duties in

Mineola or Brooklyn but jurors, when required in either of these locations, shall be drawn from the qualified jury wheel for the entire Eastern District as required.

Section 14. Summoning of Jury Panels. When the court orders a grand or petit jury to be drawn the clerk shall issue summonses for the required number of jurors and deliver them to the marshal for service. Each person drawn for jury service may be served personally or by registered or certified mail addressed to such person at his usual residence or business address. Service shall be made by the marshal who shall attach to his return the receipt for the registered or certified summons where service is made by mail.

Section 15. Limitation of Service in Two-Year Period. In any two-year period, no person shall be required to (1) serve or attend court for prospective service as a petit juror for a total of more than thirty days, except when necessary to complete service in a particular case, or (2) serve on more than one grand jury, or (3) serve as both a grand and petit juror.

Section 16. Unanticipated Shortage of Jurors. When there is an unanticipated shortage of available petit or grand jurors drawn from the qualified jury wheel, the court may require the marshal to summon a sufficient number of jurors selected

at random from the voter registration lists, in a manner ordered by the court consistent with the Act.

Section 17. Letter of Transmittal, Questionnaire and Schedule of Excuses. Any juror qualification form, letters of transmittal, questionnaires, notices or other forms used by the clerk in carrying out this plan shall be in the form prescribed by the Administrative Office of the United States Courts and approved by the Judicial Conference of the United States. Until so prescribed and approved, the form Letter of Transmittal, Questionnaire and Schedule of Excuses attached as an exhibit to this plan shall be utilized by the clerk after copies thereof have been furnished to the Administrative Office of the United States Courts, the Judicial Council of the Second Circuit and the Attorney General of the United States.

Section 18. Maintenance and Inspection of Records. After the master jury wheel is emptied and refilled, and after all persons selected to serve as jurors before the master wheel was emptied have completed such service, all records and papers compiled and maintained by the clerk before the master wheel was emptied shall be preserved in the custody of the clerk for four years or for such longer period as may be ordered by a court, and shall be available for public inspection for the purpose of determining the validity of the selection of any jury.

Section 19. Modification of the Plan. This play may be modified at any time and shall be modified when this Court is so directed by the Reviewing Panel.

Modifications of this plan, made at the instance of this Court, shall become effective after approval by the Reviewing Panel in accordance with the Act.

Section 20. Filing Copies of the Plan. Copies of the plan as initially adopted and of future modifications shall be filed with the Reviewing Panel, the Administrative Office of the United States Courts and the Attorney General of the United States.

Section 21. Effective Date of the Plan. This plan shall be placed into operation after it has been approved by a Reviewing Panel consisting of the members of the Judicial Council of the Second Circuit and the Chief Judge of this district in accordance with the Act.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
225 Cadman Plaza East
Brooklyn, New York 11201

[Juror's Name and Address]

Dear Prospective Juror:

Your name has been drawn by lot and you are being considered for future jury service in the United States District Court.

Jury service is both an opportunity and an obligation of every American citizen. Trial by jury is a keystone of our system of justice and depends upon the intelligent and unbiased judgment of qualified jurors.

I enclose a questionnaire. Your answers to the questions on this form will determine whether you are qualified. Please fill it out, sign it, and return it within ten (10) days. A franked self-addressed envelope is provided. It is important that you answer each question. It will be helpful if you type or print your answers legibly.

This is not a summons for jury service. If you are found qualified, you will be summoned for jury service at a later date.

If you do not return this questionnaire within ten (10) days, you are liable to be summoned to report at your expense at my office for completion of the questionnaire.

If you are unable to fill out this form yourself, you should have someone else do it for you. If someone else fills it out for you, such person should indicate that he has done so and the reason why he, instead of you, filled it out.

If you feel that you are unable to serve by reason of physical or mental infirmity, please give detailed information in response to Question 7, and, if possible, forward a letter from your doctor with the completed questionnaire.

There are certain grounds for excuse from jury service listed on a sheet attached to the questionnaire. If you desire

to claim a right not to serve as a juror, please examine this sheet and indicate your claim in response to Question 10 of the questionnaire. Do not ask to be excused by telephone.

If the address to which this letter is sent is not your present address, please so indicate in response to Question 4 on the questionnaire.

If, after returning this questionnaire, your address should change, please notify me immediately by letter.

Clerk, United States District Court
Eastern District of New York

Enclosure

JUROR QUALIFICATION QUESTIONNAIRE
(Please Type or Print Your Answers)

1. Name _____ Age _____ Sex _____

2. Home address _____
street, city, county, state, zip code

3. How long have you resided there? _____ years.

4. Where have you resided during the past one year?

_____ from _____ to _____
street city county state month, year month, year

_____ from _____ to _____
street city county state month, year month, year

_____ from _____ to _____
street city county state month, year month, year

5. Are you a citizen of the United States of America? _____ (yes or no).

6. Can you read, write, speak and understand the English language? _____ (yes or no).

7. Do you have any physical or mental infirmity impairing your capacity to serve as a juror? _____ (yes or no) If so, describe it fully. _____

8. Have you ever been convicted of a State or Federal crime punishable by imprisonment for more than one year? _____ (yes or no). If your answer is yes, have your civil rights been restored by pardon or amnesty? _____ (yes or no).

9. Are any charges pending against you for the commission of a State or Federal crime punishable by imprisonment for more than one year? _____ (yes or no).

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10. Do you request excuse from jury service on the basis of any of the grounds listed in the attached sheet? _____ (yes or no)

If so, explain the grounds of your claim _____

_____

11. Are you employed on a regular basis as:

(i) a member in active service in the Armed Forces of the United States? _____ (yes or no)

(ii) an active full-time member of any fire or police department? _____ (yes or no)

(iii) a public officer of the United States, State or local government who either is elected to public office or who is directly appointed by a person elected to public office? _____ (yes or no)

12. Telephone: Residence _____ Business _____

13. Are you married? _____ (yes or no)

14. What is the extent of your education? _____

The answers to the following two questions are not necessary to your qualification for jury service and THIS INFORMATION NEED NOT BE FURNISHED IF YOU PREFER NOT TO DO SO.

15. Are you presently employed? _____ Occupation or business

_____

Business address _____
street city state zip code

16. Race _____

Under penalty of law for false statements, I swear or affirm that the foregoing statements are true to the best of my knowledge and belief.

Date: _____ X _____
Signature

TO THE PROSPECTIVE JUROR

Instructions for Claiming an Excuse from Jury Service

This Court has ordered that members of the classes or groups of persons listed below may claim excuse from jury service, if they desire to do so. You may serve as a juror if you wish. However, if you are in one of the groups listed below, and it is your desire to assert a right to be excused, please circle the group listed below to which you belong and explain the ground for your claim in response to Question 10 on the questionnaire form.

The members of the following groups are entitled to claim excuse if they elect to do so:

1. All persons over seventy years of age.

2. All ministers of religion and members of religious orders actively so engaged. If you claim excuse under this category, YOU NEED NOT FURNISH ANY INFORMATION WITH RESPECT TO YOUR RELIGION IF YOU FIND IT OBJECTIONABLE TO DO SO.

3. All actively practicing attorneys, physicians, dentists, and nurses.

4. Any person who has served as a grand or petit juror in a state or federal court during the preceding two years. If you claim excuse under this category, indicate the court and dates of service in response to Question 10 of the questionnaire.

5. All school teachers in public, parochial or private schools actively teaching. If you claim excuse under this category, indicate the school and its address in response to Question 10 of the questionnaire.

6. Sole proprietors of businesses.

7. All women who are responsible for the day-to-day care of a child or children under the age of sixteen years.

8. All persons residing more than 25 miles from the United States Courthouse at 225 Cadman Plaza East, Brooklyn, New York 11201, if summoned for petit jury service in Brooklyn or for grand jury service.

9. All persons residing more than 25 miles from the Courthouse at 262 Old Country Road, Mineola, New York 11501, if summoned for petit jury service in Mineola.

If you claim excuse under categories 8 or 9, indicate the distance from your residence to the courthouse or courthouses in response to Question 10 of the questionnaire.

Under penalty of law for false statements, I swear or affirm that to the best of my knowledge and belief I am entitled to the excuse(s) I have circled above, and I request to be granted such excuse(s).

X _____

Signature

JURY PLAN (Old re Section 5 - 2nd Amendment)

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FILED

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

3 2 24 PM '72

U.S. DISTRICT COURT
E.D.N.Y.

IN THE MATTER :

OF :

AMENDING THE PLAN FOR THE RANDOM SELECTION OF GRAND AND PETIT JURORS AS REQUIRED BY PUBLIC LAW 92-269 :

The Plan of the United States District Court for the Eastern District of New York for the random selection of grand and petit jurors having been filed with the Reviewing Panel of the Administrative Office of the United States Courts and the Attorney General of the United States on September 19, 1968, Section 5 of the Plan having been amended by order of this court dated March 5, 1969 which among other provisions provided,

". . . The master jury wheel shall be emptied and refilled between November 1, 1972 and January 31, 1973 and every four years thereafter."

and Congress having on April 6, 1972 enacted Public Law 92-269 requiring the district courts to refill their master jury wheels by September 1, 1973 and their qualified jury wheels by October 1, 1973 and providing for a change in the minimum age qualification for serving as a juror in Federal courts from twenty-one years of age to eighteen years of age,

NOW, THEREFORE, it is

ORDERED that Section 5 is amended to read as follows:

EXHIBIT B

"Section 5. Master Jury Wheels. The master jury wheel shall consist of file drawers, or of the registration lists with names selected under Section 4 marked, or, in the discretion of the clerk in consultation with the Chief Judge, a properly programmed electronic data processing system, devices similar in purpose and function to a wheel. The names of all persons randomly selected from the voter registration lists of the counties shall be thus placed in the master jury wheel. The minimum number of names to be placed initially in the master jury wheel shall be fifteen thousand names.

The Chief Judge may order additional names to be placed in the master jury wheel using the same system described in section 4 from time to time as necessary. The master jury wheel shall be emptied and refilled on or before September 1, 1973 from the voter registration lists or the lists of actual voters in the 1972 general election and every four years thereafter."

Except as hereinabove amended said Plan is hereby ratified and approved, and it is further

ORDERED that qualified jurors be drawn from the aforementioned master jury wheel for service on grand and petit juries under the random selection procedure set forth in the Jury Plan on or before October 1, 1973.

Dated: Brooklyn, New York
April 26, 1972

JACOB MISHLER CH.

JOHN R. BARTELS U.S.D.J.

JOHN F. DOOLING, JR. U.S.D.J.

GEORGE ROSLING U.S.D.J.

JACK B. WEINSTEIN U.S.D.J.

ANTHONY J. TRAVIA U.S.D.J.

ORRIN G. JUDD U.S.D.J.

MARK A. COSTANTINO U.S.D.J.

EDWARD R. NEAHER U.S.D.J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- X

UNITED STATES OF AMERICA

- against - 73-CR-898

FRANK COTRONI
FRANK DASTI and
PAUL ODDO,

Defendants.

- X

MEMORANDUM OF LAW

The Government respectfully submits this Memorandum of Law and accompanying affidavit in opposition to the motion of the defendants Cotroni and Dasti for the following relief:

a.) Dismissal of the indictment
b.) Bill of Particulars
c.) Discovery and Inspection of various books, papers, documents, etc.
d.) Severance
e.) Suppression of evidence[1/]
f.) Discovery of statements of all defendants

The Government does not oppose the motion of the defendants Cotroni and Dasti for the following relief:

a.) Disclosure of evidence favorable to the accused[2/]

1/ Authorities on this question will be submitted to the Court at the conclusion of the suppression hearing.

2/ Under this general heading, the defendants request the names of prospective Government witnesses. This is opposed. It is well settled that defendants are not entitled to the names of Government witnesses. United States v. Hasiwar, 299 F. Supp. 1053, 1055 (S.D.N.Y. 1969).

b.) Inspection of the grand jury minutes.
c.) Disclosure of names of witnesses before the Grand Jury
d.) Retention of notes, memoranda, recordings and reports
e.) Disclosure of promises to witnesses
f.) Discovery of criminal records of witnesses.
g.) Disclosure of names of Grand Jurors 3/

3/ The disclosure is conditioned upon Court approval.

POINT ONE

DEFENDANTS' MOTION TO DISMISS THE INDICTMENT SHOULD BE DENIED

The defendants contend that the indictment should be dismissed on the grounds of (a) unconstitutional method of selection of the Grand Jury; (b) use of illegally secured and prejured evidence before the Grand Jury; (c) lack of specificity and failure to charge a crime; (d) failure of the Grand Jury to vote the specific indictment; and (e) improprieties in the Grand Jury procedure. The defendants' motion should be denied in all respects.

A. Method of Selection of the Grand Jury

See accompanying affidavit.

B. Use of Illegally Secured and Perjured Evidence before the Grand Jury

See accompanying affidavit.

C. Lack of Specificity and Failure to Charge a Crime

The Government submits that the indictment herein is a plain, concise and definitive written statement of the facts constituting the offense of conspiracy to import, receive, conceal, sell and facilitate the transportation, concealment and sale of illegally imported narcotics during the period charged as well as the substantive offense of receiving, concealing and

facilitating the transportation and concealment of illegally imported narcotics during the period charged. See Sections 173 and 174 of Title 21, United States Code.

D. Failure of the Grand Jury to Vote the Specific Indictment

See accompanying affidavit.

E. Improprieties in the Grand Jury Procedure

See accompanying affidavit.

POINT TWO

DEFENDANTS' REQUEST FOR A BILL OF PARTICULARS SHOULD BE DENIED EXCEPT AS CONSENTED TO.

The Government consents to furnish a Bill of Particulars of the requested items to the extent indicated below:

COUNT ONE

1. The Government consents to state the approximate time that the defendants Cotroni and Dasti became parties to the alleged conspiracy.

2. The Government consents to provide prior to trial the names of all known co-conspirators and to furnish information regarding their whereabouts. The Government opposes the remainder of this request.

3. Consented to.

4. Consented to.

A. The Government consents to state whether it will offer evidence with respect to overt acts other than those enumerated. The Government opposes the remainder of this request.

B. The Government consents to state the requested information to the extent known.

C. The Government consents to state whether conversations took place at the meetings but opposes the remainder of this request.

D. The Government opposes this request in its entirety.

E. The Government opposes this request in its entirety.

F. The Government opposes this request in its entirety.

G. The Government opposes this request in its entirety.

H. The Government opposes this request in its entirety.

COUNT TWO

The Government consents to state the requested information to the extent known.

* * *

A bill of particulars is not a device by which the defendant may compel disclosure of the Government's evidence in advance of trial. U.S. v. Crisona, 271 F. Supp. 150 (S.D.N.Y. 1967), aff'd, 416 F.2d 107 (2d Cir. 1969); U.S. v. Lebron, 222 F.2d 531, 535-36 (2d Cir.), cert. denied, 350 U.S. 876 (1955); U.S. v. Nomura Trading Co., 213 F. Supp. 704, 707-8 (S.D.N.Y. 1963); U.S. v. Kahaner, 203 F. Supp. 78, 84 (S.D.N.Y.), aff'd, 317 F.2d 459 (2d Cir. 1962), cert. denied, 375 U.S. 836. The Government contends that the demands which are not consented to seek information beyond the scope of a bill of particulars.

In substance, the demands not consented to seek a recitation of the Government's evidence and the manner in which it will attempt to prove the charges. Such information is far beyond what defendants are entitled to. The purpose of a bill of particulars is not to grant defendants a preview of the Government's case. United States v. Malinsky, 19 F.R.D. 426, 428 (S.D.N.Y. 1956).

POINT THREE

DEFENDANTS' MOTION FOR DISCOVERY AND INSPECTION SHOULD BE DENIED EXCEPT AS CONSENTED TO.

The defendants Cotroni and Dasti move for an order pursuant to Rules 16, 17(c) and 6 of the Federal Rules of Criminal Procedure "directing the United States Attorney and any and all other Government agencies and agents, including the Canadian collaborators to furnish" various books, papers, documents and tangible objects which are in the custody or control of the United States and Canadian Governments (Defense requests (a) through (e)).

The Government consents to the above insofar as it seeks the production of "written or recorded statements or confessions made by the defendants, or copies thereof within the possession, custody or control of the Government, the existence of which is known or by the exercise of due diligence may become known to the attorney for the Government" (Rule 16(e) F.R.C.P.). The Government also consents to produce items obtained from the defendants which are in the custody, control and possession of the Government. The Government opposes the "discovery or inspection of reports, memoranda or other internal Government documents made by Government agents in connection with the investigation or prosecution of the case or of statements made by Government witnesses or prospective Government witnesses to agents of the Government except as provided in 18 U.S.C. Section 3500" Rule 16(b) F.R.C.P.).

The Government opposes the motion insofar as it seeks the discovery and inspection of statements and property of defendants who are not parties to the motion. In addition, the Government is unable (and not required) to produce items which are in the possession of the Canadian Government and not in the possessiom custody and control of the United States Government.

POINT FOUR

DEFENDANTS' MOTION FOR A SEVERANCE SHOULD BE DENIED

Defendants Cotroni and Dasti move pursuant to Rule 14 of the Federal Rules of Criminal Procedure for a severance of defendants and separate trials of Count One and Count Two of the indictment. Two grounds for the above are urged by the defendants. First, the defendants contend that their co-defendants are necessary witnesses who cannot testify for them at a joint trial. Second, they contend that hearsay testimony admissible in connection with the conspiracy count of the indictment (Count One) would prejudice the trial of the substantive count of the inidctment (Count Two) and therefore a separate trial of each count should be ordered. The defendants' motion should be denied in all respects.

As a general rule, defendants accused of participation together in the same offense should be tried together. A severance should be ordered in those cases where defendants are clearly prejudiced by a joinder. Moreover, defendants herein have not made a sufficient showing to warrant a severance. The mere assertion by a defendant that he needs to obtain the testimony of his co-defendant is not enough to obtain a severance. He must demonstrate that his need is genuine and he must offer some proof

that his co-defendants would in fact testify at a separate trial (instead of invoking the Fifth Amendment priviledge against self-incrimination). See, e.g. United States v. Carella, 411 F.2d 729, 731-732 (C.A. 2, 1969).

The blanket assertion in defendants' motion papers that every co-defendant is a necessary witness "in both any pre-trial proceeding and the trial in chief for the defendant Frank Cotroni" (and presumably the same is true for defendant Dasti who joins in on the motion) is clearly insufficient when, as here, the defendants are charged with participation in a joint criminal enterprise.

The defendants' ground for a separate trial of Count One and Count Two of the indictment is also without merit. The hearsay testimony admissible in connection with the conspiracy count would be admissible at a trial of the substantive count alone. United States v. Rinaldi, 393 F.2d 97, 99 (C.A. 2, 1967).

POINT FIVE

DEFENDANTS' MOTION FOR DISCOVERY OF STATEMENTS OF ALL DEFENDANTS SHOULD BE DENIED

Defendants move for discovery and inspection of not only their own statements but also statements of their co-defendants in the possession of the United States and Canadian Governments. Defendants contend that they are entitled to the above "in view of the aiding and abetting character of Count Two" of the indictment.

The Government submits that pursuant to Rule 16 of the Federal Rules of Criminal Procedure the above ground is insufficient to compel the production of statements of co-defendants who have not joined in the motion, United States v. Edwards, 42 F.R.D. 605, Mansfield, J. (S.D.N.Y. 1967); United States v. Gardner, 308 F. Supp. 425 (S.D.N.Y. 1969); United States v. Withers, 303 F. Supp. 641 (D.C. Ill. 1967) and therefore the motion should be denied.

RESPECTFULLY SUBMITTED,

DAVID G. TRAGER
United States Attorney
Eastern District of New York

THOMAS P. PUCCIO
Assistant U. S. Attorney
Chief, Criminal Division

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
JAN 10 1975
TIME A.M.
P.M.

M'FILMED

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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73 CR 898

UNITED STATES OF AMERICA

-against-

FRANK COTRONI and FRANK DASTI,

Defendants.

- - - - - - - - - - - - - - - - -

Memorandum of Decision and Order

January 10, 1975

Defendants seek to suppress as evidence telephone conversations in which they were parties that were seized by the Special Investigation Unit of the Quebec Police Force during the period from December 30, 1970 to January 20, 1971. The government intends to offer seventeen such telephonic conversations, copied from original tapes of the conversations made simultaneously on an automatic recording device. Fifteen of these tapes are recordings of conversations which occurred between parties in Canada and New York, and Canada and Mexico. In ten of the conversations, co-defendant Paul Oddo called defendant Dasti from New York.[1] In another conversation Dasti called

[1] The trial of co-defendant Oddo was ordered severed before commencement of the present trial.

(64)

Cotroni from New York.

In July 1970, Herbe Patenaude, Director General, had taps placed on the pay telephone and private business telephone of the Victoria Sporting Club after his office received numerous complaints of illegal gambling from irate housewives who told of their husband's losses in gambling at the Victoria Sporting Club. These charges were supported by reports of surveilling officers. Patenaude determined that conventional investigative procedures were unlikely to succeed, and thereupon directed Claude LaVelle, a member of the Quebec Police Force, to install the taps.

The intercepted conversations gave Patenaude probable cause to believe that other telephones in Montreal were being used to carry on illegal gambling and narcotics trafficking. At this point, Patenaude directed that taps be placed on Cotroni's home telephone, Dasti's home telephone and the public telephone in the lobby of the Laurentien Hotel, as well as others—all in Montreal.[2] Bernard Couture, a member of the Quebec Police Force was assigned to listen

[2] In addition to the two taps on the Victoria Sporting Club, taps were placed on the phones of Frank Dasti, the Laurentien Hotel, the Salon Pierre, Santo Mendolia and G. (Vido) Orsini.

to all the tapped conversations. In accordance with his instructions, Courture discarded (or erased) irrelevant conversations, and placed the conversations relevant to the subject matter on a "dub", or master tape, by electronically copying the originals. Subsequently, these original tapes were erased and reused. None of the relevant conversations were cut, altered or edited. Only complete conversations are offered.

Defendants assert the following grounds for suppression:

1. Interception of telephonic communications was illegal in Canada prior to June 30, 1974;

2. Evidence procedured through telephone interception prior to June 30, 1974, is presently inadmissable under Canadian law;[3]

3. Title III of the Omnibus Crime Control and Safe Streets Act (Pub. L.90-351, 18 U.S.C. §§2510 et seq.) bars the use of all evidence obtained in violation of its pro-

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[3] It is conceded that prior to June 30, 1974, illegality in the method of obtaining evidence did not affect its admissibility. R. v. Steinberg 10.R.733 (1967), 3 CCC 48.

visions, or alternatively bars the use of those conversations in which a portion of the interstate telephonic system is used, i.e., telephone conversations between Canada and New York or Mexico.

A fourth assertion, not specifically set forth as a ground for suppression, is that the seizures were illegal because agents of the United States government participated in the illegal seizures and utilized them subsequently. This claim is (presumably) founded on United States v. Toscanino, 500 F.2d 267 (2d Cir. 1974). The claim of participation by United States agents in the wire taps is based on the following:

In September, 1970, Kevin Gallagher, special agent of the Drug Enforcement Administration, was assigned to the investigation of the activities of the defendants and others engaged in the international trafficking of narcotics, which is jointly pursued by many nations including the United States and Canada. Gallagher contacted his Canadian counterpart, Staff Sargeant Paul Sauve, of the Royal Canadian Mounted Police. Sgt. Sauve provided Gallagher with information obtained from the wire-taps concerning the defendants' narcotics related activities.

Gallagher was present when Sauve continued surveillance in Montreal. Later, Gallagher used some of the information obtained from the wiretaps in his surveillance of the activities of the co-conspirators in New York. Gallagher also listened to the subject tapes.

Apart from Gallagher's activities, the United States government took no part in the investigation whatsoever. The United States government did not in any way initiate, supervise, control or direct the wiretapping. It did not supply any equipment or funds. It did not supply any leads. This government had no role in the investigation except the exchange of information. There is no basis for defendants' claim of illegal activity on the part of the United States government. See United States ex rel. Lujan v. Gengler, 74-2084 (2d Cir. January 8, 1975) explicating United States v. Toscanino, supra.

CANADIAN WIRE TAP LAW PRIOR TO JUNE 30, 1974

The Canadian Criminal Code was amended on June 30, 1974 with the passage of the Protection of Privacy Act (Sections 178.1 to 178.23, Canadian Criminal Code) providing for criminal sanctions for the willful interception of "private communications", including telecommunications.

The Protection of Privacy Act parallels Title III and contains a similar series of procedures providing for lawful interception. As under Title III evidence obtained directly or indirectly from unauthorized interceptions is barred under Section 176.16.[14] Defendants concede that prior to June 30, 1974, there was "no law of Canada outlawing wiretapping, as such", but advance the claim that "wiretapping violated the criminal statutes and thus

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[14] Section 178.16(1) provides:

> "a private communication that has been intercepted and evidence obtained directly or indirectly as a result of information acquired by interception of a private communication are both inadmissible as evidence against the originator thereof or the person intended by the originator thereof to receive it unless
>
> (a) the interception was lawfully made; or
>
> (b) the originator of the private communication or the person intended by the originator thereof to receive it has expressly consented to the admission thereof."

Similarily, 18 U.S.C. §2518(10)(a) gives the aggrieved person the right to suppress the contents of an unlawfully intercepted telephonic communication.

rendered it unlawful." The statutes cited in support of this argument [15] are all clearly designed to protect tele-

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[15] (1) "AN ACT TO INCORPORATE THE BELL TELEPHONE COMPANY OF CANADA" (1880, STATUTES OF CANADA. ch. 67, Section 25)

25. An person who shall wilfully or maliciously injure, molest or destroy any of the lines, posts or other materials or property of the Company, or in any way wilfully obstruct or interfere with the working of the said telephone lines, or intercept any message transmitted thereon, shall be guilty of a misdemeanor.

(a) Section 287 OF THE CRIMINAL CODE - present Code (in force in 1971)

THEFT OF TELECOMMUNICATION SERVICE—"Telecommunication."

287. (1) Every one commits theft who fraudulently, maliciously, or without colour of right,

(a) abstracts, consumes or uses electricity or gas or causes it to be wasted or diverted, or

(b) uses any telecommunication wire or cable or obtains any telecommunication service.

(2) In this section, "telecommunication" means any transmission, emission or reception of signs, signals, writing, images or sounds or intelligence of any nature by wire or cable. 1960-61, c. 43. s.6.

(b) Section 273 OF THE CRIMINAL CODE - Code of 1960.

THEFT OF SERVICES.

273. Every one commits theft who fraudulently or maliciously

(a) abstracts, consumes or uses electricity

(continued on page 8)

phone services and equipment. It is apparent that these statutes are not designed or intended to protect the privacy of the telephone conversation, except to the extent that they protect the business of Bell Telephone. Thus, the theft of services statutes cited by defendants were clearly intended to cover uncompensated use of utility services, not wiretapping. The only statute cited that refers to the interception of communications is Section 25 of the Act to Incorporate the Bell Telephone. /6 In the

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/5 (continued)

or causes it to be wasted or diverted, or

(b) uses a telephone or telegraph line or obtains telephone or telegraph service.

THE QUEBEC TELEGRAPH & TELEPHONE COMPANIES ACT —

(Revised Statutes of Quebec, 1970, ch.286, s.23-24).

24. Every person who listens to or acquires knowledge of any conversation or message passing over the lines of a telephone system, not addressed to or intended for such person, and divulges the same or the purport or substance thereof, except when lawfully authorized or directed to do so, shall be liable to the same penalty and imprisonment as are created in section 23.

/6 The court finds a significant absence of any statute for the protection of privacy from any electronic surveillance prior to June 30, 1974. This further indicates that the statutes cited did not intend criminal sanctions to discourage invasion of privacy.

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context of that statute "intercept" means a disruption of the communication—a failure of the intended receiver to receive the message, Re Copeland and Adamson, 7 C.C.C. (2d) 393, 400 (Ontario High Court of Justice, 1972). The broader meaning assigned to the word "intercept" under the Protection of Privacy Act and federal anti-wiretapping statutes (47 U.S.C. §605; 18 U.S.C. §2510(4)) was not meant or intended in the Bell Act.[7] Defendants would have this court rule that the presence of the term "intercept" in the statute requires that the statute be given an interpretation contrary to its intended use. The answer to this suggestion is found in the words of Judge Learned Hand, in Federal Deposit Insurance Corp. v. Tremaine, 133 F.2d 827,

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[7] The court in Re Copeland and Adamson rejected the claim made here in the following language:

> "I do not believe that wiretapping which does not impede the conversation between the parties nor impede its progress can form a breach of such section [Section 25 of An Act to Incorporate the Bell Telephone Company of Canada, 1880 c 67] because the material before me does not indicate that the audio surveillance creates any disturbance of the conversation." Id. at 400

(2d Cir. 1943) where he said:

> "There is no surer guide in the interpretation of a statute than its purpose when it is sufficiently disclosed; nor any surer mark of over solicitude for the letter than to wince at carrying out that purpose because the words used do not formally quite match with it."

Furthermore, it is not clear that even if the Bell Act were violated, the violation would be a crime. The Act Incorporating the Bell Telephone was provinical legislation which . . . "provides a penalty [but] does not necessarily bring it within the category of criminal law (citations omitted)." Regina v. Chapman and Grange, 11 C.C.C. (2d) 20 C.R.N.S. 141, 156. The Act authorizing incorporation was not part of the statutory criminal law.

The other statute upon which defendants rely and which has some possible relevance to their claim is section 24 of the Quebec Telephone and Telegraph Companies Act. Again, however, the purpose of this statute is to protect property, not the right to privacy. Furthermore, several decisions have clearly held that police officers who engage in wiretapping while performing their lawful duties and in pursuance of their investigative function, did not violate such statutes. In Re Copeland and Adamson, supra;

Regina v. Pearson, 66 Western Weekly Reports 380, Her Majesty the Queen v. Barton Roy Lesarge (Gen. Sessions of the Peace, District of York, Sept. 23, 1974). It is not necessary to decide whether these decisions were based on the theory that the class described in the various statutes excludes police officers in the pursuance of their duties, or that acts of police officers in the pursuance of their duties lack the requisite criminal intent. In either case, this court finds that the Quebec Police, who had probable cause to wiretap and followed their established procedures prior to initiating the wiretap, did not violate this or any other law in so doing. Defendants' reliance on Regina v. Chapman and Grange, supra, is misplaced. This court is convinced that the finding of unlawful conduct in that case was based on the purpose and nature of the wiretap in question. In that case, Chapman, a member of the police force, installed a wiretap on a labor union telephone at the direction of Grange, his employer, who was engaged in strike breaking activities. The facts clearly demonstrate that Chapman was working for a private employer, and was not acting in his official capacity. The court's statement that Chapman was a "plain clothes detective" was irrelevant to the decision.

FPI—SS—3-17-72—30M—0153

The wiretap evidence obtained by the Quebec Police Force was not obtained in violation of Canadian Law.

ADMISSIBILITY OF WIRETAP EVIDENCE SEIZED PRIOR TO JUNE 30, 1974 IN CANADIAN COURTS

The Protection of Privacy Act is silent on the admissibility of wiretapped evidence obtained prior to June 30, 1974. It cannot be argued that lawfully obtained wiretap evidence is presently inadmissible, since the Act expressly provides for the admissibility of such evidence where "the interception was lawfully made." (Section 178.16(1)). Furthermore, it is clear that no legitimate purpose would be served by barring evidence lawfully obtained. The exclusionary rule is designed to serve a profilactic function, by discouraging the activities which lead to the development of the evidence in question. See, e.g., Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684 (1961). Here, however, no such purpose could possibly be served because the authorities are in Canada, and rulings by this court will have no impact on their activity. Finally, it is clear that the requirements of the Act for authorized wiretapping should not be retroactively applied. Her Majesty the Queen v. Andre Desjardins et Jean-Claude Suneau, Queen's Bench Court, Montreal, October 18, 1974.

FPI—SS—3-17-72—30M—4153

TELEPHONIC CONVERSATIONS BETWEEN CANADA AND NEW YORK OR MEXICO

A more difficult question is presented with relation to tapes containing conversations between persons in Canada and New York, and Canada and Mexico. The penal provision of Title III prohibits any person from willfully intercepting any wire communication (18 U.S.C. §2511(1)(a). As defined under 18 U.S.C. §2510,

> "[w]ire communication" means any communication made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable or other like connection between the point of origin and the point of reception . . . . (Subd. (1))
>
> "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States. (Subd. (3))
>
> "[P]erson" means any employer or agent of the United States or any State or political subdivision thereof, and any individual, partnership, association, joint stock company, trust or corporation. (Subd. (6))
>
> "Investigative or law enforcement officer" means any officer of the United States or of a state or political subdivision thereof . . . . (Subd. (7))

From these definitions it is clear that the class of persons upon whom criminal liability is imposed under section 2511 are those within the United States and not outside the United States. It further appears that the communications which are protected are the interstate communications. The court concludes that conversations intercepted by wiretaps installed on lines outside the United States do not come within the proscriptions contained in Title III, though they engage part of our interstate system of wire communication. See section 108 Public Law, 90-35 Congressional findings.

Thus it appears that though Congress may have had the power to declare the interception by persons in foreign lands of telephonic communications which in part use the wire communication system within the United States to be criminal conduct, it chose not to do so. In United States v. Toscanino, supra at 279-280, Judge Mansfield, holding that Title III "has no application outside of the United States," further noted that " . . . the statute significantly makes no provision for obtaining authorizations for a wiretap in a foreign country."

FPI—SS—3-17-72—30M—0153

The motion to suppress seventeen telephonic conversations (Ex. 36, 37 and 38) is in all respects denied and it is

SO ORDERED.

U. S. D. J.

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JAN 14 1975
TIME A.M.
P.M.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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73 CR 898

UNITED STATES OF AMERICA

-against-

Memorandum of Decision and Order

FRANK COTRONI and
FRANK DASTI,

Defendants.

January 14, 1975

Defendant Dasti moves to suppress as evidence conversations seized by the Quebec Police in which he spoke with his wife, asserting that use of these conversations violates the husband-wife or marital privilege. Defendant's motion raises two questions:

1) whether the motion is timely; and

2) whether, even if timely, the defense is maintable.

Because the court reaches the latter question, it is unnecessary to consider the question of timeliness.

The husband-wife privilege is designed to protect the privacy of the marriage relationship from invasions which might endanger that relationship. Under this

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FPI—SS—3-17-72—30M—0153

privilege, statements made by one spouse to the other are ordinarily inadmissible without the consent of both husband and wife. Similarly, the rule prohibits the testimony of one spouse against the other. However, society's interest in protecting the sanctity of the marriage relationship does not extend to the situation in which "both spouses are substantial participants in patently illegal activity." United States v. Kahn, 471 F.2d 191, 194 (7th Cir. 1972). cert. denied, 411 U.S. 986, 93 S.Ct. 2271 (1973). It is clear that marital harmony is not effected by admitting conversations which concern illegal activity, and that the privilege has no application in such situations.

In United States v. Kahn, supra, the United States obtained a warrant authorizing the wiretapping of Mr. Kahn's telephone, pursuant to Title III of the Omnibus Crime Control and Safe Streets Act of 1968 (18 U.S.C. §2510 et seq.) Mrs. Kahn was not named in the warrant, and defendants (Mr. & Mrs. Kahn) sought to suppress as evidence those conversations in which both husband and wife participated, asserting that these interceptions violated the marital privilege under the ninth amendment, the common law and

18 U.S.C. §2517(4).[1]

The court held that because the conversations seized concerned ongoing criminal activity, none of the asserted privileges rendered them inadmissible. Id. at 195. In reaching this determination, the court cited several cases in which testimony which would otherwise be protected by the husband-wife privilege was admitted into evidence because it concerned participation in an unlawful enterprise. United States v. Doughty, 460 F.2d 1360, 1364 (7th Cir. 1972). United States v. Pugliese, 153 F.2d 497, 500 (2d Cir. 1945). See also Uniform Rule of Evidence 28, Exception (2)(e); Note, Future Crime or Tort Exception to Communications Privilege, 77 Harv. L. Rev. 730, 734 (1964).

In addition, it is pertinent to note that although the Supreme Court declined to review the marital

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[1]

> (4) No otherwise privileged wire or oral communication intercepted in accordance with, or in violation of the provisions of this chapter shall lose its privileged character.

FPI—SS—3-17-72—30M—9153

privilege issue raised in Kahn, it did consider a related question in the case. In United States v. Kahn, 415 U.S. 143, 94 S.Ct. 977 (1974), the Court held that although Mrs. Kahn was not named in the warrant, but was simply one of the persons described "as yet unknown", conversations involving her and her husband, as well as those involving her and third parties were admissible. The Court ruled that a valid warrant authorized interception of all conversations made on the tapped telephone which concerned the offenses described in the warrant.

From these decisions, it seems quite clear that the conversations in question here should not be suppressed. The court concurs with the views expressed by the Court of Appeals in the Kahn decision, and finds that the marital privilege does not bar admission of conversations such as those involved here, which are relevant to the investigation of illegal activity.

In this regard, it is important to point out that while some of the conversations appear to be entirely innocent in themselves, they concern events and activities integral to the conspiracy. These conversations therefore are highly relevant to the crime, linking defendant Dasti

to the alleged offenses.

Defendant Dasti's motion to suppress the tapes is in all respects denied and it is

SO ORDERED.

Jacob Mishler
U. S. D. J.

A 212 FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ MAR 24 1975 ★
TIME A.M.
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - -

73 CR 898

UNITED STATES OF AMERICA

-against-

FRANK COTRONI and FRANK DASTI,

Defendants.

Memorandum of Decision and Order

March 24, 1975

- - - - - - - - - - - - - - - - - - -

On January 21, 1975, at about 11:00 P. M., the jury returned a verdict of guilty against both defendants on both counts of the indictment, 73 CR 898, charging defendants with conspiracy to violate federal narcotics laws and a substantive narcotics violation, 21 U.S.C. §§ 173 and 174. The court, on its own motion, polled the jury in accordance with Fed.R.Crim.P. 31(d). After inquiring of counsel whether defendants wished to make any other applications before discharging the jury, and receiving a negative reply, the court discharged the jury.

In a letter dated February 23, 1975, addressed to the court, Muriel K. Lewis, a juror, wrote:

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> In deliberations I changed my opinion from "not guilty to guilty." When I gave my decision to the court I was most sincere and convinced this was right.

Based on Mrs. Lewis's statements indicating a self-examination as to how she arrived at a guilty verdict,[1] defendants move for a new trial or alternatively for "a hearing of the trial jurors so as to establish, on the record, whether or not a new trial would be appropriate."[2] Nothing in the letter indicates coercion of any kind except the discomfort and fatigue resulting

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[1] The substance of the complaint, if the letter is such, is stated in this part of the letter, which follows the portion above quoted:

> Now that I have had time to consider all aspects of the case again I find myself wondering why I changed my decision. Weakness in character? Perhaps. Combine that with complete exhaustion and you have a better picture. Is it standard procedure to let a jury deliberate for approximately ten hours without a break of any kind? Not even at lunch or dinner did we have time to relax and collect our thoughts. I think it is most unfair to the jurors as well as to the defendants—we all have to live with the decision.

[2] The court interprets the letter dated March 6, 1975, by counsel for defendant Cotroni as a motion for a new trial. Dasti joined in the motion.

from continuous deliberations over a period of ten hours. [3]

The case was given to the jury at about 12:30 P. M. The court provided the jury with lunch which was delivered to the jury room. At about 5:30 P. M., the court advised the jury that it would order dinner to be delivered to the jury room if the jurors believed deliberations would continue beyond 8:00 P. M. Sandwiches were served to the jurors at about 6:30 P.M. At no time did counsel object to this procedure.

The polling of the jury is a declaration of assent by each juror to the verdict and enables defendant to ascertain with certainty that each juror approves of the verdict. Posey v. United States, 416 F.2d 545 (5th Cir. 1969), cert. denied, 397 U.S. 946, 90 S.Ct. 965 (1970), United States v. Edwards, 469 F.2d 1362 (5th Cir. 1972). After a polling and discharge of the jury, a verdict can not be challenged by a juror's change of mind or claim

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[3] The letter reveals the juror's belief in the fairness of the trial and the jury process. It states:

> Judge Mischler [sic] I admire and respect the unbiased way you conduct your court. If in your opinion the verdict of guilty was a fair and just decision then please destroy this letter. I hope I have not offended you in any way.

that he was mistaken or unwilling in his assent to the verdict. United States v. Schroeder, 433 F.2d 846 (8th Cir. 1970), cert. denied, 400 U.S. 1024, 91 S.Ct. 591 (1971).

Internal influences, such as coercive forces present in argument during a jury's deliberation, as distinguished from external influences cannot serve to impeach a jury verdict, United States v. Johnson, 495 F.2d 1097 (5th Cir. 1974).[4] Thus, a post-verdict statement by a juror that he thought the defendant was innocent but that he was persuaded by the other jurors to vote guilty will not impeach the verdict, United States v. Chereton, 309 F.2d 197 (6th Cir. 1962), cert. denied, 372 U.S. 936, 83 S.Ct. 883 (1963), United States v. Betancourt, 427 F.2d 851 (5th Cir. 1970). Post-verdict testimony of the motives of a juror is impertinent, United States v. Crosby, 294 F.2d 928, 950 (2d Cir. 1961), cert. denied, 368 U.S. 984, 82 S.Ct. 599, rehearing denied, 369 U.S. 881, 82 S.Ct. 1138 (1962).[5]

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[4] A verdict must be set aside where adverse publicity affected a jury's verdict. United States v. Rattenni, 480 F.2d 195 (2d Cir. 1973).

[5] Juror testified that his verdict was influenced by information he obtained from a newspaper that the co-defendant pleaded guilty.

Similarly, the possibility of fatigue through extended deliberations is an ineffective attack on a jury verdict, United States v. Tubbs, 461 F.2d 43 (7th Cir. 1972), cert. denied, 409 U.S. 873, 93 S.Ct. 205.[6]

The motion for a new trial or alternatively for a hearing is in all respects denied and it is

SO ORDERED.

U. S. D. J.

[6] Court's denial of defense counsel's request to suspend jury's deliberation at 4:00 A. M. not an abuse of discretion.

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COURT
DISTRICT
YORK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

Docket No. 73 Cr. 898

-vs.-

NOTICE OF APPEAL

FRANK COTRONI, et al.,

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
APR 2 1975
TIME A.M.....
P.M.....

Defendants.

----------x

S I R S :

PLEASE TAKE NOTICE that the above named defendant, Frank Cotroni, hereby appeals to the United States Court of Appeals for the Second Circuit from a judgment of conviction entered March 24, 1975 (Mishler, J. and a jury) and from each and every intermediate adverse judgment and determination.

Dated: New York, New York
April 2, 1975

Yours, etc.

JOHN NICHOLAS IANNUZZI, ESQ.
Attorney for Appellant
233 Broadway
New York, New York 10007
(212) BA 7-9595

TO: Clerk
United States District Court
Eastern District of New York
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

(77)

David G. Trager, Esq.
United States Attorney for the
Eastern District of New York
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Frank Cotroni
Federal Detention Headquarters
427 West Street
New York, New York 10011

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United States v. Frank Cotroni
73-CR-898

November 1, 1974

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3. Grand Jury Minutes of Catania (United States v. Cotroni, et al. - October 9, 1973)
4. Grand Jury Minutes of Catania (United States v. Asaf Y Bala, et al. - October 16, 1973)
5. Affidavit of Catania submitted for Cotroni and Orsini extradition (November 12, 1973)
6. Affidavit of Catania submitted for Cotroni extradition (October 15, 1973)
7. Affidavit of Catania submitted for Orsini extradition (October 15, 1973)
8. Affidavit of Catania submitted for Buscetta extradition (February 24, 1974)
9. Handwritten notes of Thomas P. Puccio pertaining to Catania's testimony in United States v. Asaf Y Bala, et al. (September-October, 1973)
10. Handwritten notes of Thomas P. Puccio pertaining to Catania's testimony in United States v. Cotroni, et al. (September-October, 1973)
11. Grand Jury minutes of Ronald Provencher (United States v. Cotroni, et al. - October 9, 1973)
12. Grand Jury minutes of Kevin Gallagher (United States v. Cotroni, et al. - September 27, 1973)
13. Grand Jury minutes of Kevin Gallagher (United States v. Cotroni, et al. - October 9, 1973)
14. Testimony of Guy David, Francois Leduc, Francois Brunet and Claude Savoie at Cotroni-Orsini extradition hearing held on November 19, 1973 (French)
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19. Opinion of Honorable Mr. Justice Ruston B. Lamb in Cotroni-Orsini extradition case (December 11, 1973)
20. Fingerprint record of Frank Dasti
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A 220

United States v. Frank Cotroni
73-CR-898

November 8, 1974

GOVERNMENT'S SUPPLEMENTAL DISCOVERY
AND LEGAL OPINION OF L.-P. LANDRY, Q.C.

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42. Copy of November 6, 1974 opinion letter of L.-P. Landry, Q.C. and supporting Canadian authorities.

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GOVERNMENT'S SUPPLEMENTAL DISCOVERY
(Items 43 to 64)

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* Omitted portions will be submitted to the Court for in camera inspection.

United States v. Frank Cotroni, et al. A 222 December 4, 1974
73-CR-008

GOVERNMENT'S SUPPLEMENTAL DISCOVERY
Items 65 to 73

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71. VEGAS "9" - summaries (logs) and transcripts of intercepted telephone conversations
72. VEGAS "11" - summaries (logs) and transcripts of intercepted telephone conversations
73. VEGAS "12" - summaries (logs) and transcripts of intercepted telephone conversations

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TIME A.M.
P.M.

A 223

DEPARTMENT OF JUSTICE
MINISTÈRE DE LA JUSTICE

C.P. 938
Place d'Armes
Montreal H2Y 3J4
Québec, Canada

November 6, 1974

Mr. Thomas P. Puccio
Assistant United States Attorney
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Frank COTRONI
our file 10,489

Dear Mr. Puccio:

You will find herein my opinion on the legality of wire-tapping in Canada prior to the enactment of certain amendments to the Criminal Code which became effective on June 30th, 1974. You will also find herein my opinion on the admissibility in Canada of wire-tapping evidence obtained prior to the above-mentioned legislation.

The Government of Canada enacted legislation under the title "Protection of Privacy Act" Chapter 50 of the Statutes of Canada 1973-74, which became effective on June 30th, 1974, and which regulates in Canada the interception of private communications. Prior to this enactment, we did not have in Canada a law preventing the interception of private communications.

Prior to the enactment of the Protection of Privacy Act, which is now incorporated in the Criminal Code of Canada, under Sections 178.1 to 178.23, Police forces in Canada and other agencies involved in the investigation of crimes could intercept private communications for the detection of crimes in order to afford evidence which could later on be used before Canadian Courts. The use of electronic listening devices by Police forces would normally be done under the authority of internal rules within each

. . . 2

Police force. An example of such rules appears in the case of Re Copeland and Adamson et al reported at 7 C.C.C. 2nd series, page 393.

In two cases decided prior to June 1974, Canadian Courts had stated clearly that the use of electronic listening devices by Police officers for the detection of crimes was not illegal in Canada and that such Police officers could divulge to the proper authorities the content of the communications intercepted. Such authorities would include the Police authorities, as well as the Courts. You will find attached a copy of each of the two judgments which are the above-quoted case of Re Copeland and Adamson and Regina vs. Pearson et al, reported at 66 Western Weekly Reports, page 380. Those two cases make it very clear that evidence obtained in Canada prior to June 1974 would be admissible in evidence before Canadian Courts.

Section 178.16 of the Criminal Code enacted on June 30th, 1974, now provides that a private communication which has been intercepted may be used in evidence only if the interception was lawfully made under the new enactment. It was argued in recent cases, both in Toronto and Montréal, that interceptions which may have been made prior to the enactment of the Protection of Privacy Act could not anymore be used in evidence. The Courts have rejected such argument and have decided that the law proclaimed in force in Canada on June 30th last did not have any retroactive effect and did not prevent the admission in evidence of private communications intercepted prior to June 30th 1974. You will find attached a copy of each of these two decisions, to wit, the case of Her Majesty the Queen against Barton, Roy, Lesarge, a decision from the Honourable Judge Martin, of Toronto, and the case of Sa Majesté la Reine c. André Desjardins et Jean-Claude Surreau, a decision rendered by the Queen's Bench Court in Montréal on the 18th of October 1974.

You will note particularly in the decision of Judge Martin, as well as in the decision of Re Copeland and Adamson that a reference is made to the Telephone Act of Ontario and particularly Section 112 of that Act. In the case of Frank Cotroni, I understand that the interceptions were made in the Province of Québec. I have looked at the Québec legislation and I am of the opinion that in this respect, the Québec

. . . 3

legislation compares to that of Ontario. You will find attached, for your information, a copy of Chapter 286 of the Revised Statutes of Québec of 1964, which is entitled "Telegraph and Telephone Companies Act". You will note that Section 24 of that Act is the equivalent of Section 112 of the Telephone Act of Ontario. This means that the reasoning used in the two cases of Lesarge and Copeland is also applicable to matters arising in the Province of Québec.

I have reviewed the procedure followed by the Québec Police officers who were instrumental in the use of electronic listening devices in the present case. I have found that in this case the officers did consult the proper superior officers of the Québec Provincial Police and did obtain an authorization from such officers to carry on the proposed interception involving in particular Mr. Frank Cotroni. This would therefore place this case squarely within the ambit of the decision rendered in the Copeland case.

I am therefore of the opinion that the evidence obtained in this case through the use of electronic listening devices was lawfully obtained in Canada and would, if submitted to a Court in Canada, be admissible evidence.

You will also find enclosed, for your information, a copy of Sections 178.1 to 178.23 of the Criminal Code of Canada which were enacted on June 30th 1974, under the title "Protection of Privacy Act".

Yours very truly,

L.-P. LANDRY, Q.C.
Regional Director, Federal Department of Justice, and Attorney for the Attorney General of Canada

LPL/G

condition, which I view as a condition subsequent, is equally void for uncertainty. Thus the wife has a life interest in the home, whether she resides in it or not. In the event she does not reside in it she is entitled to lease or otherwise use the premises.

In the event I reached the foregoing conclusion, counsel for the residuary legatees cited *Re McDonald* (1919) 17 OWN 70, as authority for the proposition that the tenant for life pays the usual outgoings, including taxes. Counsel for the wife did not dispute that proposition. Therefore the answer to Q. 7 (a) and (b) is that the wife is obligated to maintain the premises, and to pay all taxes, assessments and charges against the property so long as she shall retain her life interest in the property.

The earlier questions are answered as follows:

(1) Yes.

(2) No.

(3) No.

(4) The wife.

(5) Yes.

(6) The wife.

Costs may be spoken to, if necessary.

BRITISH COLUMBIA

SUPREME COURT — DOHM, J.

Regina v. Pearson et al

Criminal Law — Evidence — Recorded Conversations Obtained by Wire-Tapping — Admissibility of.

During the course of a trial the crown sought leave to put in as evidence tape recordings of incoming and outgoing telephone conversations on a telephone line to a house in which the offence charged was alleged to have been committed. Dohm, J. ruled that the tape recordings were admissible in evidence and that the weight of the recordings as evidence was a matter for the jury. He *held* that there was no law in Canada at present prohibiting the use of recorded evidence obtained by wire-tapping nor was there, in the use of such evidence, any violation of the *Canadian Bill of Rights*, 1960, ch. 44.

[Note up with 7 CED (2nd ed.) *Criminal Law (General)*, sec. 274; 10 CED (2nd ed.) *Evidence*, secs. 6, 17, 38.]

T. G. Bowen-Colthurst, Q.C., and *S. Toy,* for crown.
H. A. D. Oliver, for defendant, Black.
H. J. McGivern, Q.C., for defendant, Binns.
H. John McGivern, for defendant, Schmidt.
M. Storrow, for defendant, Pearson.
J. Poyner, for defendant, Dumont.
H. Doig, for defendant, Cross.
L. T. Doust, for defendant, Spivey.
R. W. Cannon, for defendants, Baker and Gregory.
T. Gargrave, for defendant, Wilbur.

September 27, 1968.

DOHM, J. (orally) — During the past five days gentlemen, with the jury out, we have conducted an intensive inquiry here into the tape recorded incoming and outgoing telephone calls on the telephone line at the house on Napier St. This is the house in which it is alleged the victim was confined and where the other crimes alleged took place. The wire tapping was done by the Vancouver city police, and the recording device, I am satisfied, was in operation prior to the victim being brought to the house, during the time that the victim was in the house and also next day. As a judge alone I am satisfied that these tape recordings are authentic and accurate. I have heard them played and find them audible except for occasional background noises. Parts of the tape were not played for me and I understand that these edited parts were available to the defence if they so desired.

Witnesses gave evidence and identified some of the accused's voices on these tapes.

In my opinion, some of the accused have been sufficiently identified by their voices on these tapes.

I have ruled as inadmissible one submitted portion of the tapes where the voices were not identified, although that portion might well be said to have been relevant to the issue before this court.

Many able arguments have been addressed to me against admitting this evidence before the jury. We, as lawyers, all know that identification by voice is not new to the law, similarly a tape recording is simply a tool for recording the spoken word. There is no law in Canada at the present time prohibiting the use of recorded evidence obtained by wire tapping, as was done here. In my opinion, there is no violation

of the *Canadian Bill of Rights*, 1960, ch. 44, as one counsel urged. I would also point out that it is not for a judge, but for the people of Canada, through parliament, to make laws prohibiting this procedure if they so desire. I have also been urged not to admit this evidence because it would be encouraging this practice. I do not feel that these matters are within my province and I just must deal with the situation as it presently exists.

Like other evidence, to be admissible it must be relevant to the issue before the jury. I have given this also considerable thought. One of the issues before the jury will be whether or not the victim was confined in the house and by which of the accused, if any. Therefore it is important for the jury to know who was in the house at the time in question. You may well recall that one of the witnesses, who has already testified, said words to this effect: "We were all participating in these events." On this basis alone I find that all the recorded evidence tendered by the crown, except the portion that I have referred to, is relevant to the issue of the confining in the house; as to whether or not there was any confining and who, if any of the accused, participated in the confining.

Some of the recorded evidence including identified background statements are matters testified to by the victim. In this aspect the case is unique. One incoming phone call announces the forthcoming capture of the victim.

As a result of this thorough inquiry I am of the opinion that this evidence should be heard by the jury. It may or may not be of assistance to the jury on the question of identification of the accused and it may or may not be accepted by the jury as evidence capable of corroborating the victim's evidence.

In the final analysis, as I have stated before during this inquiry, it will be for the jury to weigh this evidence, as they do any evidence, and to give to it such weight as they feel should be given to it.

Although I have satisfied myself on the essential points I shall make it clear to the jury that it is for them alone to come to their own independent decision of the authenticity and accuracy of the recordings and the proof of the identification of voices to the degree required in all criminal cases.

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RE COPELAND AND ADAMSON et al

Ontario High Court of Justice, Grant, J. April 19, 1972.

Civil rights — Enjoyment of property — Wire-tapping — Audio surveillance pursuant to consent of chief of police on reasonable and probable grounds to believe in commission of criminal offence — Whether violation of Telephone Act (Ont.), s. 112 or Bell Telephone Company of Canada Act (Can.), s. 25 — Whether violation of common law right — Whether status in ordinary citizen to restrain wire-tapping — Police Act, R.S.O. 1970, c. 351, ss. 8, 16, 55, 72 — R.R.O. 1970, Reg. 680 — Cr. Code, ss. 25(1), 443 — Canadian Bill of Rights, s. 1(a).

Mandamus — Status to apply — Restraint of wire-tapping — Whether citizen has status to apply for order to Chief of Police to direct force to cease wire-tapping.

Pursuant to a policy statement of the Board of Commissioners of Police for Metropolitan Toronto a peace officer could employ audio surveillance only upon obtaining the prior approval of the chief of police and only when reasonable and probable cause existed to believe a criminal offence was or would be committed. On an application for prohibition and *mandamus* to prevent such audio surveillance, *held*, the application should be dismissed.

The material on the application did not disclose audio surveillance otherwise than in accordance with the policy statement. The *Criminal Code*, as exemplified in s. 25(1), protects peace officers and even private citizens acting on reasonable and probable grounds, and, therefore, in such a case there is no breach by a peace officer of s. 112 of the *Telephone Act*, R.S.O. 1970, c. 457, making it an offence for any person who has acquired "knowledge of any conversation... not addressed to . . . such person . . . [to divulge] the purport . . . of the conversation... except when lawfully authorized or directed so to do". Furthermore, s. 25 of "An Act to incorporate The Bell Telephone Company of Canada", 1880 (Can.), c. 67, making it an offence to "interfere" or "intercept" telephone messages is not violated since wire-tapping does not impede or disturb a telephone conversation. Nor is any common law right violated since a person has no legally enforceable right to the privacy of his conversation even if held on the telephone, and therefore s. 1(*a*) of the *Canadian Bill of Rights*, R.S.C. 1970, App. III, "the right of the individual to . . . enjoyment of property, and the right not to be deprived thereof except by due process", did not assist the applicant.

In any case the applicant, as an ordinary citizen, had no status to maintain the application, which only in very exceptional circumstances may be brought by the Attorney-General. Where the Board of Commissioners of Police have decided upon a course of action after careful consideration it is not for a Court but for Parliament to prescribe more stringent limitations on wire-tapping. The role of a Court is to rule on the admissibility of evidence secured by wire-tapping if its admissibility would operate unfairly against the accused.

[*Priestman v. Colangelo et al.*, [1959] S.C.R. 615, 124 C.C.C. 1, 19 D.L.R. (2d) 1; *Kennedy v. Tomlinson et al.* (1959), 126 C.C.C. 175, 20 D.L.R. (2d) 273; *R. v. Ormerod*, [1969] 2 O.R. 230, [1969] 4 C.C.C. 3; *Entick v. Carrington* (1765), 19 State Trials 1029; *R. v. Steinberg*, [1967] 1 O.R. 733, [1967] 3 C.C.C. 48; *R. v. Pearson* (1968), 66 W.W.R.

380; *Re Bell Telephone Co. of Canada*, [1947] O.W.N. 651, 89 C.C.C. 196, 4 C.R. 162; *The King v. County of London Quarter Sessions Appeals Committee, Ex p. Metropolitan Police Commissioner* (1947), [1948] 1 K.B. 670; *Frey v. Fedoruk, Stone and Watt* (1949), 95 C.C.C. 206, [1950] 3 D.L.R. 513, 8 C.R. 373, [1949] 2 W.W.R. 604; revd [1950] S.C.R. 517, 97 C.C.C. 1, D.L.R. *loc. cit.*, 10 C.R. 26; *R. v. Commissioner of Police of the Metropolis, Ex p. Blackburn*, [1968] 2 W.L.R. 893; *R. v. Foll* (1956), 117 C.C.C. 19, 25 C.R. 69, 64 Man. R. 198, 19 W.W.R. 661 [vard in result 118 C.C.C. 43, 26 C.R. 68, 65 Man. R. 67, 21 W.W.R. 481]; *Silvestro v. The Queen* (1964), [1965] S.C.R. 155, [1965] 2 C.C.C. 253, 45 C.R. 76; *R. v. Sommervill*, [1963] 3 C.C.C. 240, 40 C.R. 384, 43 W.W.R. 87; *R. v. Maqsud Ali*, [1965] 2 All E.R. 464; *Kuruma, Son of Kaniu v. The Queen*, [1955] A.C. 197; *Hauer v. Hauer, Reid and Jubenville* (1959), 18 D.L.R. (2d) 742, 28 W.W.R. 181; *Reliable Toy Co. Ltd. et al. v. Collins*, [1950] O.R. 360, [1950] 4 D.L.R. 499, 13 C.P.R. 53, 11 Fox Pat. C. 5, refd to]

APPLICATION for an order of *mandamus* and of prohibition requiring the Chief of Police and the Board of Commissioners of Police for Metropolitan Toronto to direct the members and civilian employees of the Metropolitan Toronto Police Force to cease and desist from audio surveillance.

Ian G. Scott and *Clayton C. Ruby*, for applicant.
Douglas K. Laidlaw, Q.C., for respondents.

GRANT, J.:—The applicant is a solicitor practising his profession in partnership in Toronto offices. He has telephones at both his office and residence and uses all of them in discussions with his clients. Many of these conversations are confidential and privileged as between his client and himself. There is no suggestion that any police officer has ever caused the telephone line leading to his office or residence to be subject to audio surveillance or wire-tapping, as it is commonly called, or that any conversation over such lines has been intercepted by police officers at any time. On January 7, 1971, the applicant wrote to the Board of Commissioners of Police for Metropolitan Toronto stating that it had come to his attention that police officers under the command of such Board were authorized on occasions, as a detection technique, to acquire knowledge of conversations passing over telephone lines by means of electronic surveillance when the police were not a party to the conversation. He demanded of such Board that such practice should cease. In reply thereto the applicant received a letter from the chairman of such Board in which the latter enclosed a copy of a decision made by the Board in March, 1969, which sets out the reasons why the members thereof thought that such surveillance was essential in the exercise of police duties and enumerating the circumstances in which it

would be permitted. It will be sufficient for the consideration of this motion to set forth the decision to which such Board came at that time and which sets out the practice which has been followed since then.

> Until such time as effective legislative regulations are provided, the Metropolitan Toronto Board of Commissioners of Police will:
>
> 1. Request the enactment of legislation to control the manufacture, importation, sale, distribution and use of wiretapping and electronic listening equipment.
> 2. Require that the use of such equipment by any member of the Metropolitan Toronto Police will only be with the approval in each case of the Chief of Police and only when in his opinion there is reasonable and probable cause to believe that a criminal offence has been or is about to be committed.
>
> It is further recommended that an immediate appointment be sought with the Attorney-General to discuss the most effective manner of having the Federal Government deal with this problem.

The applicant brings this motion asking for an order of *mandamus* requiring Harold Adamson, Chief of Police of the Metropolitan Toronto Police Department and the Board of Commissioners of Police for Metropolitan Toronto to direct the members and civilian employees of the Metropolitan Toronto Police Force to cease and desist from contravening s. 112 of the *Telephone Act*, R.S.O. 1970, c. 457, namely, acquiring knowledge of conversations or messages passing over telephone lines not addressed to or intended for them, and divulging the purport or substance of these conversations or messages without lawful authority or direction; and to apprehend members and civilian employees of the Metropolitan Toronto Police Force who have committed an offence against s. 112 of the *Telephone Act*, and to lay informations before the proper tribunal, and to prosecute and aid in the prosecution of such offenders; and to take all steps necessary to prevent breach by the members and civilian employees of the Metropolitan Toronto Police Force of s. 112 of the *Telephone Act*, and to take all steps necessary to restore law and order in this respect in the Municipality of Metropolitan Toronto, and for an order that the above respondents be prohibited from causing members or civilian employees of the Metropolitan Toronto Police Force to breach s. 112 of the *Telephone Act*, or for such other order as may seem just, upon the following grounds:

1. That in causing members or civilian employees of the Metropolitan Toronto Police Force to breach s. 112 of the *Telephone Act*, the respondents are acting *ultra vires* the *Police Act*, R.S.O. 1970, c. 351, and further have acted unlawfully;

2. that the respondents have failed to perform their statutory public duty to prevent offences, to apprehend offenders, to lay informations before the proper tribunal, to prosecute and aid in the prosecution of offenders and to provide for the maintenance of law and order in the Municipality of Metropolitan Toronto by authorizing, directing and permitting the breach of s. 112 of the *Telephone Act*, contrary to the *Police Act*, ss. 17(1), 16 and 55;
3. that the order sought is necessary to prevent disorder, defect of police, a failure of justice, and to preserve good government in the Municipality of Metropolitan Toronto.

For the applicant it is submitted that the actions of such police officers under the direction of and with the approval of such police commission and Chief of Police Adamson in conducting such audio surveillance in the manner set out in such decision of the Board is unlawful. In support thereof he relies upon s. 112 of the *Telephone Act*, which is as follows:

> 112. Every person who, having acquired knowledge of any conversation or message passing over any telephone line not addressed to or intended for such person, divulges the purport or substance of the conversation or message, except when lawfully authorized or directed so to do, is guilty of an offence and on summary conviction is liable to a fine of not more than $50 or to imprisonment for a term of not more than thirty days, or to both.

It is to be noted by such section that the offence thereby created is the "[divulging] the purport or substance of the conversation or message, except when lawfully authorized or directed so to do". It follows that one who listens in or acquires knowledge of a conversation or message passing over the telephone line and refrains from relaying the same to another person would not be guilty of an offence under such section. However, one can safely assume that a police officer who has acquired information in such authorized manner which he determines is helpful in the detection or prevention of a crime will in all cases pass it on to a superior officer and divulge it if he is called as a witness at the trial of the person who made the statement if it is relevant and admissible. The divulging of the message so obtained is not by such section created an offence if the recipient is lawfully authorized or directed so to do.

The policy statement referred to makes it clear that a police officer is only permitted to use audio surveillance when approval in each case is given by the chief of police and only then when in the latter's opinion there is reasonable and probable cause to believe that a criminal offence has been or is

about to be committed. In deciding whether the police officers or the commission are acting unlawfully in following such course, one should have in mind the duties and responsibilities of a board of commissioners of police as well as those of the police force itself.

The Board of Police Commissioners for Metropolitan Toronto is established pursuant to s. 8 of the *Police Act*. That section provides that such Board shall consist of the head of the Council, a Judge of any County or District Court designated by the Lieutenant-Governor in Council, and such person as the Lieutenant-Governor in Council may designate. By s. 16 of such Act the Board may by by-law make regulations not inconsistent with those which are of a general nature established under s. 72 of such Act for the government of the police force, for preventing neglect or abuse, and for rendering it efficient in the discharge of its duties. Section 17 directs that the Board is responsible for the policing and maintenance of law and order in the municipality and the members of the police force are subject to the government of the Board and shall obey its lawful directions. Section 55 of the Act which is applicable to the Metropolitan Toronto Police Force reads as follows:

> 55. The members of police forces appointed under Part II, except assistants and civilian employees, are charged with the duty of preserving the peace, preventing robberies and other crimes and offences, including offences against the by-laws of the municipality, and apprehending offenders, and laying informations before the proper tribunal, and prosecuting and aiding in the prosecuting of offenders, and have generally all the powers and privileges and are liable to all the duties and responsibilities that belong to constables.

The schedule to R.R.O. 1970, Reg. 680, sets out the code of offences to which a police officer may be liable and establishes a duty on the part of police constables to report where offenders are to be found, to make due exertions for bringing offenders to justice, to report matters that it is their duty to report, and to disclose any evidence that he or any person within his knowledge can give for, or against, any prisoner or defendant. Failure to perform any of the duties therein set forth would render the officer guilty of an offence against the code of ethics established by such Reg. 680 passed under the authority of the *Police Act*.

It follows from the above that all police officers who may become aware of facts, including conversations which have been heard without permission from those holding the conversation and which may tend to establish criminal responsibility or prevent contemplated crime, are duty bound to advise their

superior officer thereof. The fact that such information may have come to the knowledge of the officer through audio surveillance of a telephone does not relieve him from such responsibility. If the divulging of the conversation occurs during the course of the officer giving evidence in Court proceedings, that amounts to an occasion when he is lawfully authorized and obliged to do so and is not an offence under such section. If a private citizen clandestinely listening to a telephone conversation between other persons, hears of a plan by them to rob a bank and immediately notifies the police thereof, can it be seriously contended that he is thereby guilty of a breach of such s. 112? This illustration merely indicates that the essential element to create such an intent must be that the information is unlawfully divulged.

It may well be that occasions have and will arise when by mistake a telephone message of an innocent person may be intercepted and his private conversation listened to and later divulged, but it is not such an incident that I am in these proceedings dealing with. It is possible as well that on occasion a disobedient police officer may indulge in audio surveillance without the authority of the chief of police and in doing so act quite improperly and without regard to the rights of the telephone user. That situation again is not the case I am asked to deal with. It would be impossible for a chief of police to guard always against improprieties on the part of his officers. I am considering on this motion only whether the Court should, as the law now stands, restrain the Chief of Police and the Board of Commissioners of Police for Metropolitan Toronto from using audio surveillance in the course of their duties in those cases where the chief of police has given his approval after being of opinion that there is reasonable and probable cause to believe that a criminal offence has been or is about to be committed.

It is necessary to consider what situations or facts provide justification to a police officer for the various courses that he may take in the course of his duties. The *Criminal Code* protects him in the discharge of his duties in doing what he is required or authorized to do if he acts on reasonable and probable grounds. This same protection is afforded to a private person if he is required or authorized by law to do anything in the administration or enforcement of the law. This is found in s. 25(1) of the *Criminal Code*, which reads as follows:

> 25(1) Every one who is required or authorized by law to do anything in the administration or enforcement of the law
>
> (a) as a private person,

(*b*) as a peace officer or public officer,

(*c*) in aid of a peace officer or public officer, or

(*d*) by virtue of his office,

is, if he acts on reasonable and probable grounds, justified in doing what he is required or authorized to do and in using as much force as it necessary for that purpose.

Priestman v. Colangelo et al., [1959] S.C.R. 615, 124 C.C.C. 1, 19 D.L.R. (2d) 1.

Kennedy v. Tomlinson et al. (1959), 126 C.C.C. 175, 20 D.L.R. (2d) 273.

In the latter case, Schroeder, J.A., at p. 202 C.C.C., p. 259 D.L.R., states:

> The duty of a police constable to make a proper inquiry and to take preventive action against crime exists not only at common law but is now statutory.

In distinguishing between what has been referred to as an alleged recognition of public duty to excuse breach of the criminal law by police officers on the one hand and the justification which the *Criminal Code* prescribes to officers where they are proceeding to enforce the law, Laskin, J.A., in *R. v. Ormerod*, [1969] 2 O.R. 230 at pp. 244-5, [1969] 4 C.C.C. 3 at p. 18, states:

> The *Criminal Code* presently prescribes justification for policemen and others in a number of respects where they are proceeding to enforce the law, as, for example, by arresting offenders. This is designed as an aid to enforcement, and presumes that the enforcing officers are not themselves participating in the criminal activity that they are seeking to curb.

The material before me only indicates that audio surveillance is being used by the police in Metropolitan Toronto in the manner prescribed by such policy statement of the Board. This establishes that such equipment is used only with the approval in each case of the chief of police granted only when in his opinion there is reasonable and probable cause to believe that a criminal offence has been or is about to be committed. As the law now stands, such interception by a police officer in my opinion does not amount to an offence against s. 112 of the *Telephone Act* (Ontario) for the reasons set out above.

Counsel for the applicant also relies upon s. 25 of "An Act to incorporate The Bell Telephone Company of Canada", 1880 (Can.), c. 67, which reads as follows:

> 25. Any person who shall wilfully or maliciously injure, molest or destroy any of the lines, posts or other material or property of the Company, or in any way wilfully obstruct or interfere with the work-

> ing of the said telephone lines, or intercept any message transmitted thereon, shall be guilty of a misdemeanor.

The only part of such section which it might be said would be breached by wire-tapping would be the words "interfere" or "intercept". Can it be said that listening in on a telephone conversation is properly described by either of such terms? The Shorter Oxford English Dictionary defines the word "interfere" as follows:

> "To interpose — intersperse; to strike against each other; to come into collision; to exercise reciprocal action so as to increase, diminish or nullify the natural effects of each."

It defines the word "intercept" as follows:

> "To take or seize by the way or before arrival at a destined place; to stop or interrupt the progress or course of; to interrupt communications or connections with."

I do not believe that wire-tapping which does not impede the conversation between the parties nor impede its progress can form a breach of such section because the material before me does not indicate that the audio surveillance creates any disturbance of the conversation.

The applicant further submits that electronic eavesdropping by "wiretapping" is at common law unlawful. It is urged that it is a return to the general search condemned in the English Courts since the 18th century: *Entick v. Carrington* (1765), 19 State Trials 1029.

Section 443 of the *Criminal Code* safeguards the citizen from such search by requiring the justice who issues the search warrant to be satisfied by information upon oath of the following requirements before he may issue such authority. These are that the articles relating to a specific crime will be found at the place; that the things to be seized must be specifically mentioned; and that the articles seized under a warrant must be returned to such justice. The Courts have consistently made it clear that search warrants cannot be used to carry out a general search. The words of such section, however, relate to tangible property rather than the right of a citizen to privacy and I do not think it has application to the situation being considered here, except that it is an indication of the safeguards the law provides to protect the citizen against invasion of his property.

The applicant also contends that the action of the police contemplated by such policy statement is contrary to the provisions of the *Canadian Bill of Rights*, R.S.C. 1970, App. IiI (enacted 1960, c. 44), s. 1(*a*), which reads as follows:

1. It is hereby recognized and declared that in Canada there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and fundamental freedoms, namely,

(a) [paraphrased] the right of the individual to enjoyment of property -- and the right not to be deprived thereof except by due process of law.

In *R. v. Steinberg*, [1967] 1 O.R. 733, [1967] 3 C.C.C. 48, the Court of Appeal was dealing with the admissibility of evidence of tape recordings which were obtained by means of electronic listening devices placed in the accused's home during the officer's search of the premises under a valid search warrant. Counsel for the accused in that case submitted that the police had done what amounted to an infringement of the right of the accused to enjoyment of his property by placing the listening device in his home and relied on such s. 1(*a*) of the *Bill of Rights*. Aylesworth, J.A., in giving the judgment of the Court stated the method of obtaining the evidence did not affect its admissibility. Further consideration of the matter was immaterial to the issue before the Court.

Such section is only declaratory of the rights therein described and makes no provision for enforcing them. At common law a person apparently had no legally enforceable right to the privacy of his conversation even if it be held on the telephone. Does the right to enjoyment of one's property declared by such *Bill* to exist, include freedom from intrusion therein by way of surveillance of one's telephone conversations therefrom? In the course of a criminal trial, *R. v. Pearson* (1968), 66 W.W.R. 380, where evidence of conversations by the accused was obtained by the police by means of secretly recording incoming and outgoing calls on the telephone line by electronic devices, Dohm, J., stated at pp. 381-2:

> There is no law in Canada at the present time prohibiting the use of recorded evidence obtained by wire tapping, as was done here. In my opinion, there is no violation of the *Canadian Bill of Rights*, 1960, ch. 44, as one counsel urged.

The overhearing of a telephone conversation is not in itself *prima facie* unlawful. The British Columbia Legislature has passed "An Act for the Protection of Personal Privacy" [*Privacy Act*], 1968 (B.C.), c. 39, which deals with eavesdropping and surveillance. Interesting sections thereof include the following:

> 2(1) It is a tort, actionable without proof of damage, for a person, wilfully and without a claim of right, to violate the privacy of another.
>
> 3(1) An act or conduct is not a violation of privacy where

(c) the act or conduct was authorized or required by or under a law in force in the Province or by a Court or any process of a Court; or

(d) the act or conduct was that of

(i) a peace officer acting in the course of his duty for the prevention, discovery, or investigation of crime or of the discovery or apprehension of the perpetrators of a crime; or

(ii) a public officer engaged in an investigation in the course of his duty under a law in force in the Province,

and was neither disproportionate to the gravity of the crime or matter subject to investigation nor committed in the course of a trespass.

In 1947 a case was heard in the Ontario Supreme Court to test the legality of a search warrant issued against a bookmaker in the form that it might be used to authorize wire-tapping of his premises. In a motion to quash the warrant (*Re Bell Telephone Co. of Canada*, [1947] O.W.N. 651, 89 C.C.C. 196, 4 C.R. 162), Chief Justice McRuer said, at p. 655 O.W.N., p. 200 C.C.C.:

> ... the purpose of the search warrant is to secure things that will in themselves be relevant to a case to be proved, not to secure an opportunity of making observations in respect of the use of things, and thereby obtain evidence. In this respect, I think the warrant is defective and an order will go quashing it.

Other than the statute of British Columbia above referred to, no other common law Province of Canada provides a right of privacy *per se* or a remedy for breach thereof. The Quebec *Civil Code* does establish a civil remedy for invasion of privacy.

In *The King v. County of London Quarter Sessions Appeals Committee, Ex p. Metropolitan Police Commissioner* (1947), [1948] 1 K.B. 670 (C.A.) at p. 675, Lord Goddard, C.J., stated that eavesdropping was never an indictable offence and that "no instance can be found in the books of any indictment being preferred for this offence at common law". His conclusion was, "It follows, therefore, that nobody can be convicted of eavesdropping ...".

In *Frey v. Fedoruk, Stone and Watt* (1949), 95 C.C.C. 206, [1950] 3 D.L.R. 513, 8 C.R. 373, the British Columbia Court of Appeal sustained the conviction of one Frey for being a peeping tom, holding that even in the absence of any specific section of the *Criminal Code* covering the same, the act of peeping or prowling at night was a breach of the King's peace and a common law crime and that his arrest was justified. On appeal to the Supreme Court of Canada, [1950] S.C.R. 517, 97

C.C.C. 1, D.L.R. *loc. cit.*, it was held that it could not be said that a criminal act had been committed. The conduct in question was [p. 527 S.C.R., p. 12 C.C.C., p. 552 D.L.R.] "*contra bonos mores*, but was not *contra pacem* in the sense of being a breach of the criminal law". The judgment of Lord Goddard to the effect that nobody could be convicted of eavesdropping was cited with approval.

The relationship between privacy and trespass at common law was considered in a 1959 issue of the Law Times with these conclusions. Ancient authority is to be found for the proposition that in English law the natural rights of an occupier do not include freedom from view and inspection by neighbouring occupiers. Of course where there is an actual entry on land the law of trespass gives a remedy against the invasion of property but if the defendant commits the annoyance by watching or listening from the other side of the road there is, normally, no protection that the occupier can have under the civil law. English law therefore does not accept that freedom from being overlooked exists. It is not a natural right pertaining to land for which a legal remedy is given either by an action for nuisance or otherwise.

It appears therefore that in the Province of Ontario at least one has no legally enforceable right to the privacy of his conversation except to the limited extent provided by the Ontario *Telephone Act* above referred to. In earlier times the need for laws protecting the individual against intrusion in his private life was not so urgent because of the absence of gadgets to listen to his closeted conversations. However, soon after the invention of the telegraph, power to intercept messages was developed and used to such an extent that in 1862 the State of California passed legislation prohibiting interception. Techniques for tapping telephone lines have been in use since 1890. The advances in the abilty to wire-tap or eavesdrop have advanced so rapidly in recent years that it presents a serious threat to our freedom of speech today. The apparatus used in snooping devices have been developed in such miniature and deceptive form that it has become difficult to detect that one is being subjected to its secretive observation or attention. Such listening is not now confined to apparatus directly connected with the telephone or with wires leading to one's residence. Devices have been developed that permit listening in to conversations in a room without any apparatus being installed in the premises whatsoever. Telescopic and parabolic microphones permit hearing conversations at a distance of 300 ft. The capacity for secretive visual observation has also developed tremendously in recent years.

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Professor Alan F. Westin in his article "Science, Privacy, and Freedom: Issues and Proposals for the 1970's" (Part I), 66 *Columbia L. Rev.* 1003 (1966) at p. 1009, has written:

> Technical and physical difficulties in the application of the new devices are more in the nature of obstacles to be overcome by ingenuity than fundamental blocks to surveillance. Nor have available counter-measures yet been developed as effective protections for the average citizen. . . . the capacity to provide reasonable safeguards for individual and group privacy, a central assumption of man's social interaction since the dawn of civilization, has been overtaken by modern surveillance devices.

It would appear therefore that there is a pressing need for legislation in Canada providing protection to the individual against such abuses and regulating the area within which such devices may be lawfully used.

The applicant relies on the case of *R. v. Commissioner of Police of the Metropolis, Ex p. Blackburn*, [1968] 2 W.L.R. 893, to establish his right or status to ask for the *mandamus* directed to the Chief of Police and the Board of Commissioners of Police for Metropolitan Toronto. This was a case in which the Chief of Police of the Metropolis had given instructions as a matter of policy whereby no observations by police were to be kept on licensed or registered clubs for the purpose of detecting offences under the *Betting, Gaming and Lotteries Act, 1963*. As a result, police observation thereof was stopped and no attempt was made to enforce s. 32(1) of the Act. Lord Lenning, M.R., at pp. 902-3, stated:

> I hold it to be the duty of the Commissioner of Police of the Metropolis, as it is of every chief constable, to enforce the law of the land. He must take steps so to post his men that crimes may be detected; and that honest citizens may go about their affairs in peace. He must decide whether or no suspected persons are to be prosecuted; and, if need be, bring the prosecution or see that it is brought. But in all these things he is not the servant of anyone, save of the law itself. No Minister of the Crown can tell him that he must, or must not, keep observation on this place or that; or that he must, or must not, prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone. That appears sufficiently from *Fisher v. Oldham Corporation*, [1930] 2 K.B. 364; 46 T.L.R. 390, and *Attorney-General for New South Wales v. Perpetual Trustee Co. Ltd.*, [1955] A.C. 457; [1955] 2 W.L.R. 707; [1955] 1 All E.R. 846, P.C.
>
> Although the chief officers of police are answerable to the law, there are many fields in which they have a discretion with which the law will not interfere. For instance, it is for the Commissioner of Police of the Metropolis, or the chief constable, as the case may be, to decide in any particular case whether inquiries should be pursued, or whether an arrest should be made, or a prosecution brought. It must be for him to decide on the disposition of his force and the con-

centration of his resources on any particular crime or area. No court can or should give him direction on such a matter. He can also make policy decisions and give effect to them, as, for instance, was often done when prosecutions were not brought for attempted suicide. But there are some policy decisions with which, I think, the courts in a case can, if necessary, interfere. Suppose a chief constable were to issue a directive to his men that no person should be prosecuted for stealing any goods less than £100 in value. I should have thought that the court could countermand it. He would be failing in his duty to enforce the law.

A question may be raised as to the machinery by which he could be compelled to do his duty. On principle, it seems to me that once a duty exists, there should be a means of enforcing it. This duty can be enforced, I think, either by action at the suit of the Attorney-General: or by the prerogative writ of mandamus. I am mindful of the cases cited by Mr. Worsley which he said limited the scope of mandamus. But I would reply that mandamus is a very wide remedy which has always been available against public officers to see that they do their public duty. It went in the old days against justices of the peace both in their judicial and in their administrative functions. The legal status of the Commissioner of Police of the Metropolis is still that he is a justice of the peace, as well as a constable. No doubt the party who applies for mandamus must show that he has sufficient interest to be protected and that there is no other equally convenient remedy. But once this is shown, the remedy of mandamus is available in case of need, even against the Commissioner of Police of the Metropolis.

Can Mr. Blackburn invoke the remedy of mandamus here? It is I think an open question whether Mr. Blackburn has a sufficient interest to be protected. No doubt any person who was adversely affected by the action of the commissioner in making a mistaken policy decision would have such an interest. The difficulty is to see how Mr. Blackburn himself has been affected.

Before the judgment of the Court was given the Commissioner of Police withdrew such direction to his officers and undertook to carry out his duties of inspection and prosecution under the Act. As a result of this, the *mandamus* order did not issue. However, our present case is different in that in Metropolitan Toronto the Police Commission are enforcing the law but in doing so are adopting the means of audio surveillance in some cases and it is only their manner of enforcement that the applicant has objection to.

The application actually amounts to one for a mandatory injunction to restrain the Board of Commissioners of Police for Metropolitan Toronto and the Police Chief from authorizing and directing the continuance of what is alleged to be breaches of s. 112 of the *Telephone Act* in the course of their attempts to intercept crime or obtain evidence in connection therewith. The plaintiff has no status to maintain such a proceeding and the same may only in very exceptional circumstances be brought by the Attorney-General: 11 Hals., 3rd ed., p. 86; S.A.

de Smith, *Judicial Review of Administrative Action* (1959), pp. 343, 346 and 442.

Where the Board of Commissioners of Police have decided upon a course of action which has all appearances of following a careful consideration in each individual case before audio surveillance is authorized by the Chief of Police, it is not for this Court to interfere with its decision. In such circumstances this Court should not intervene to prevent such officers from using the means of secretly listening in on telephone conversations between other persons to assist them in their duties. If they are to be restrained in the use of electronic surveillance of persons suspected of crime, it is Parliament that should prescribe such limitations. The role of the Court is to rule on the admissibility of evidence so obtained when it is offered during the course of a particular trial. The Court will not admit evidence secured thereby if its admissibility would operate unfairly against the accused: *R. v. Steinberg, supra*; *R. v. Foll* (1956), 117 C.C.C. 19, 25 C.R. 69, 64 Man. R. 198 (Man. Q.B.) [vard in result 118 C.C.C. 43, 26 C.R. 68, 65 Man. R. 67]; *Silvestro v. The Queen* (1964), [1965] S.C.R. 155, [1965] 2 C.C.C. 253, 45 C.R. 76 (S.C.C.); *R. v. Sommervill*, [1963] 3 C.C.C. 240, 40 C.R. 384, 43 W.W.R. 87 (Sask. C.A.); *R. v. Maqsud Ali*, [1965] 2 All E.R. 464 (C.C.A.); *Kuruma, Son of Kaniu v. The Queen*, [1955] A.C. 197, *per* Lord Goddard at p. 204.

The rule is the same in civil proceedings: *Hauer v. Hauer, Reid and Jubenville* (1959), 18 D.L.R. (2d) 742, 28 W.W.R. 181; *Reliable Toy Co. Ltd. et al. v. Collins*, [1950] O.R. 360, [1950] 4 D.L.R. 499, 13 C.P.R. 53 (Ont. C.A.).

There is always inherent jurisdiction in the Court to protect the accused when the Crown's evidence has been obtained in an unfair manner or if the prosecution amounts to an abuse of the Court's process through oppressive or vexatious proceedings: *R. v. Ormerod, supra*. Laskin, J.A., at p. 238 O.R., p. 10-1 C.C.C., in dealing with the defence of entrapment, states:

> To uphold the defence, which goes not to the issue of whether the crime has been committed but to the issue of whether the methods employed by the police should be tolerated, it would be necessary for the Courts to exercise a dispensing jurisdiction in respect of the administration of the criminal law. There is no statutory warrant for such a jurisdiction, but that does not mean that a Court is powerless to prevent abuses, be they abuses in the lodging of the prosecution itself or in the establishment of the foundation for the prosecution.

When legislation controlling the use of electronic surveillance is in force here the Courts will then have authority

to restrain intrusions upon privacy, to the extent that it is thereby declared illegal, before the unlawful invasion occurs rather than being limited to the subsequent dispensing prerogative above referred to.

I would be wandering beyond the borders of the problem in this case if I were to attempt to lay down rules for police authorities to follow so that the proper balance may be preserved between the right or obligation of the police to use such surveillance in the course of their duties on the one hand and the individual's right to privacy on the other. To do so would be to interfere with the judgment of the Board of Commissioners of Police as to the methods which it feels essential to meet the task of retaining law and order and suppressing crime and a direction as to how it should carry out its statutory duty under the *Police Act*. To grant the relief requested would amount to a direction that under no circumstances should police officers be permitted to resort to audio surveillance in the pursuit of their duties.

The motion should be dismissed and the applicant should pay the costs of the respondents.

Application dismissed.

REGINA v. LAHOSKY

Manitoba Court of Appeal, Guy, Monnin and Dickson, JJ.A.
May 25, 1972.

Appeal — Jurisdiction — Whether appeal lies to Court of Appeal from decision of trial Judge refusing accused's motion to traverse trial to next assizes — Cr. Code, ss. 602, 534(5), 600.

No provision in the *Criminal Code* creates a right to appeal to the Court of Appeal from the decision of a trial Judge as to whether he will or will not grant an accused's motion pursuant to s. 534(5) of the *Criminal Code* for the traversal of his trial to the following assize and in the absence of a statutory provision creating a right to appeal there can be none.

[*Mulvihill v. The King* (1914), 23 C.C.C. 194, 18 D.L.R. 217; *R. v. Munevich* (1942), 78 C.C.C. 77, [1942] 3 D.L.R. 482, [1942] 3 W.W.R. 127, 53 B.C.R. 4; *R. v. Bordenink* (1919), 45 D.L.R. 470, [1919] 1 W.W.R. 968, 12 S.L.R. 126; *R. v. Sankey* (1927), 49 C.C.C. 195, 39 B.C.R. 247; *Cook v. Westgate* (1944), 82 C.C.C. 190, [1944] 4 D.L.R. 309, [1944] 3 W.W.R. 145, 52 Man. R. 227; *Welch v. The King* (1950), 97 C.C.C. 177, [1950] 3 D.L.R. 641, [1950] S.C.R. 412, 10 C.R. 97, refd to]

Courts — Assizes — Motion for traversal of trial because appeal from sentence of co-accused who pleaded guilty whom defence intends to call as witness not yet disposed of — Semble, no wrongful exercise of discretion for trial Judge to refuse traversal — Cr. Code, s. 534(5).

DEAD BODY.

178. Every one who

(a) neglects, without lawful excuse, to perform any duty that is imposed upon him by law or that he undertakes with reference to the burial of a dead human body or human remains, or

(b) improperly or indecently interferes with or offers any indignity to a dead human body or human remains, whether buried or not,

is guilty of an indictable offence and is liable to imprisonment for five years. 1953-54, c. 51, s. 167.

Para. (*b*). Proof is only required of the general *mens rea* to commit a criminal offence and it is not necessary to prove that the accused knew that the body was dead: *R. v. LADUE,* [1965] 4 C.C.C.264, 45 C.R.287 (Y.T.C.A.).

PART IV.1

INVASION OF PRIVACY

Interception of Communications

DEFINITIONS—"Authorization"—"Electromagnetic, acoustic, mechanical or other device"—"Intercept"—"Offence"—"Private communication"—"Sell".

178.1 In this Part,

"authorization" means an authorization to intercept a private communication given under section 178.13 or subsection 178.15(2);

"electromagnetic, acoustic, mechanical or other device" means any device or apparatus that is used or is capable of being used to intercept a private communication, but does not include a hearing aid used to correct subnormal hearing of the user to not better than normal hearing;

"intercept" includes listen to, record or acquire a communication or acquire the substance, meaning or purport thereof;

"offence" means an offence contrary to or any conspiracy or attempt to commit or being accessory after the fact in relation to sections 47, 51, 52, 58, 62, 76.1, 76.2, 76.3, 78, 79, 80, 108, 109, 110, 121, 178.11, 178.18, 218, 247, 281.1, 303, 305, 306, 312, 314, 325, 326, 331, 338, 339, 383, 389, 407, 408, 410, paragraph 186(1)(*e*) and paragraph 294(*a*); sections 4 and 5 of the *Narcotic Control Act*; sections 34 and 42 of the *Food and Drugs Act*; section 192 of the *Customs Act*; unlawful distillation, selling, offering to sell or purchasing of spirits contrary to sections 158 and 163 of the *Excise Act*; or any other indictable offence in respect of which there are reasonable and probable grounds to believe that it forms a pattern of similar or related offences by two or more persons acting in concert, and that such pattern is part of the activities of organized crime;

Section 178.1—*continued*

"private communication" means any oral communication or any telecommunication made under circumstances in which it is reasonable for the originator thereof to expect that it will not be intercepted by any person other than the person intended by the originator thereof to receive it;

"sell" includes offer for sale, expose for sale, have in possession for sale, distribute or advertise for sale. 1973, c. 50, s. 2.

INTERCEPTION—Saving provision—Consent to interception.

178.11 (1) Every one who, by means of an electromagnetic, acoustic, mechanical or other device, wilfully intercepts a private communication is guilty of an indictable offence and liable to imprisonment for five years.

(2) Subsection (1) does not apply to

(a) a person who has the consent to intercept, express or implied, of the originator of the private communication or of the person intended by the originator thereof to receive it;

(b) a person who intercepts a private communication in accordance with an authorization or any person who in good faith aids in any way a person whom he has reasonable and probable grounds to believe is acting with any such authorization;

(c) a person engaged in providing a telephone, telegraph or other communication service to the public who intercepts a private communication,

(i) if such interception is necessary for the purpose of providing such service,

(ii) in the course of service observing or random monitoring necessary for the purpose of mechanical or service quality control checks, or

(iii) if such interception is necessary to protect the person's rights or property directly related to providing such service; or

(d) an officer or servant of Her Majesty in right of Canada in respect of a private communication intercepted by him in the course of random monitoring that is necessarily incidental to radio frequency spectrum management in Canada.

(3) Where a private communication is originated by more than one person or is intended by the originator thereof to be received by more than one person, a consent to the interception thereof by any one of such persons is sufficient for the purposes of paragraph (2)(*a*), subsection 178.16(1) and subsection 178.2(1). 1973, c.50, s.2.

APPLICATION FOR AUTHORIZATION.

178.12 An application for an authorization shall be made *ex parte* and in writing to a judge of a superior court of criminal jurisdiction,

or a judge as defined in section 482 and shall be signed by the Attorney General of the province in which the application is made or the Solicitor General of Canada or an agent specially designated in writing for the purposes of this section by

(a) the Solicitor General of Canada personally, if the offence under investigation is one in respect of which proceedings, if any, may be instituted at the instance of the Government of Canada and conducted by or on behalf of the Attorney General of Canada, or

(b) the Attorney General of a province personally, in respect of any other offence in that province,

and shall be accompanied by an affidavit which may be sworn on the information and belief of a peace officer or public officer deposing to the following matters, namely:

(c) the facts relied upon to justify the belief that an authorization should be given together with particulars of the offence;

(d) the type of private communication proposed to be intercepted;

(e) the names and addresses, if known, of all persons, the interception of whose private communications there are reasonable and probable grounds to believe may assist the investigation of the offence, and if not known, a general description of the place at which private communications are proposed to be intercepted or, if a general description of that place cannot be given, a general description of the manner of interception proposed to be used;

(f) the period for which the authorization is requested; and

(g) whether other investigative procedures have been tried and have failed or why it appears they are unlikely to succeed or that the urgency of the matter is such that it would be impractical to carry out the investigation of the offence using only other investigative procedures. 1973, c.50, s.2.

GROUNDS ON WHICH JUDGE MUST BE SATISFIED—Content and limitation of authorization—Renewal of authorization—Grounds on which renewal granted.

178.13 (1) An authorization may be given if the judge to whom the application is made is satisfied that it would be in the best interests of the administration of justice to do so and that

(a) other investigative procedures have been tried and have failed;

(b) other investigative procedures are unlikely to succeed; or

(c) the urgency of the matter is such that it would be impractical to carry out the investigation of the offence using only other investigative procedures.

(2) An authorization shall

(a) state the offence in respect of which private communications may be intercepted;

Section 178.13—*continued*

(b) state the type of private communication that may be intercepted;

(c) state the identity of the persons, if known, whose private communications are to be intercepted and where the identity of such persons is not known, generally describe the place at which private communications may be intercepted or, if a general description of that place cannot be given, generally describe the manner of interception that may be used;

(d) contain such terms and conditions as the judge considers advisable in the public interest; and

(e) be valid for the period, not exceeding thirty days, set forth therein.

(2.1) The Solicitor General of Canada or the Attorney General, as the case may be, may designate a person or persons who may intercept private communications under authorizations.

(3) Renewals of an authorization may be given from time to time by a judge of a superior court of criminal jurisdiction or a judge as defined in section 482 upon receipt by him of an *ex parte* application in writing signed by the Attorney General of the province in which the application is made or the Solicitor General of Canada or an agent specially designated in writing for the purposes of section 178.12 by the Solicitor General of Canada or the Attorney General, as the case may be, accompanied by an affidavit of a peace officer or public officer deposing to the following matters, namely:

(a) the reason and period for which the renewal is required, and

(b) full particulars, together with times and dates, when interceptions, if any, were made or attempted under the authorization, and any information that has been obtained by any interception,

and supported by such other information as the judge may require.

(4) A renewal of an authorization may be given if the judge to whom the application is made is satisfied that any of the circumstances described in subsection (1) still obtain, but no such renewal shall be for a period exceeding thirty days. 1973, c.50, s.2.

MANNER IN WHICH APPLICATION TO BE KEPT SECRET—Order of judge.

178.14 (1) All documents relating to an application made pursuant to section 178.12 or subsection 178.13(3) are confidential and, with the exception of the authorization, shall be placed in a packet and sealed by the judge to whom the application is made immediately upon determination of such application, and such packet shall be kept in the custody of the court in a place to which the public has no access or in such other place as the judge may authorize and shall not be

(a) opened or the contents thereof removed except

(i) for the purpose of dealing with an application for renewal of the authorization, or

(ii) pursuant to an order of a judge of a superior court of criminal jurisdiction or a judge as defined in section 482; and

(b) destroyed except pursuant to an order of a judge referred to in subparagraph (*a*) (ii).

(2) An order under subsection (1) may only be made after the Attorney General or the Solicitor General by whom or on whose authority the application was made for the authorization to which the order relates has been given an opportunity to be heard. 1973, c.50, s.2.

APPLICATIONS TO SPECIALLY APPOINTED JUDGES—Authorizations in emergency—Certain interceptions deemed not lawful—"Chief Justice" defined —Inadmissibility of evidence.

178.15 (1) Notwithstanding section 178.12, an application for an authorization may be made *ex parte* to a judge of a superior court of criminal jurisdiction, or a judge as defined in section 482, designated from time to time by the Chief Justice, by a peace officer specially designated in writing for the purposes of this section by

(a) the Solicitor General of Canada, if the offence is one in respect of which proceedings, if any, may be instituted by the Government of Canada and conducted by or on behalf of the Attorney General of Canada, or

(b) the Attorney General of a province, in respect of any other offence in the province,

if the urgency of the situation requires interception of private communications to commence before an authorization could, with reasonable diligence, be obtained under section 178.13.

(2) Where the judge to whom an application is made pursuant to subsection (1) is satisfied that the urgency of the situation requires that interception of private communications commence before an authorization could, with reasonable diligence, be obtained pursuant to section 178.13, he may, on such terms and conditions, if any, as he considers advisable, give an authorization in writing for a period of up to thirty-six hours.

(3) For the purposes of section 178.16 only, an interception of a private communication in accordance with an authorization given pursuant to this section shall be deemed not to have been lawfully made unless the judge who gave the authorization or, if such judge is unable to act, a judge of the same jurisdiction, certifies that if the application for the authorization had been made to him pursuant to section 178.12 he would have given the authorization.

(4) In this section, "Chief Justice" means

(a) in the Province of Ontario, the Chief Justice of the Supreme Court;

Section 178.15—*continued*

(b) in the Province of Quebec, the Chief Justice of the Court of Queen's Bench (Crown Side);

(c) in the Provinces of Nova Scotia, New Brunswick, Prince Edward Island, Alberta and Newfoundland, the Chief Justice of the Supreme Court;

(d) in the Province of British Columbia, the Chief Justice of the Supreme Court;

(e) in the Provinces of Manitoba and Saskatchewan, the Chief Justice of the Court of Queens Bench;

(f) in the Yukon Territory, the judge of the Supreme Court; and

(g) in the Northwest Territories, the judge of the Supreme Court.

(5) The trial judge may deem inadmissible the evidence obtained by means of an interception of a private communication pursuant to a subsequent authorization given under this section, where he finds that the application for such subsequent authorization was based on the same facts, and involved the interception of the private communications of the same person or persons, or related to the same offence, on which the application for the original authorization was based. 1973, c.50, s.2.

INADMISSIBILITY OF PRIVATE COMMUNICATION—Judge may rule evidence admissible—Application of subs. (1)—Notice of intention to produce evidence—Privileged evidence.

178.16 (1) A private communication that has been intercepted and evidence obtained directly or indirectly as a result of information acquired by interception of a private communication are both inadmissible as evidence against the originator thereof or the person intended by the originator thereof to receive it unless

(a) the interception was lawfully made; or

(b) the originator of the private communication or the person intended by the originator thereof to receive it has expressly consented to the admission thereof.

(2) Where in any proceedings the judge is of the opinion that any private communication or any other evidence that is inadmissible pursuant to subsection (1)

(a) is relevant, and

(b) is inadmissible by reason only of a defect of form or an irregularity in procedure, not being a substantive defect or irregularity, in the application for or the giving of the authorization under which such private communication was intercepted or by means of which such evidence was obtained, or

(c) that, in the case of evidence, other than the private communication itself, to exclude it as evidence may result in justice not being done,

he may, notwithstanding subsection (1), admit such private communication or evidence as evidence in such proceedings.

(3) Subsection (1) applies to all criminal proceedings, and to all civil proceedings and other matters whatever respecting which the Parliament of Canada has jurisdiction.

(4) A private communication that has been lawfully intercepted shall not be received in evidence unless the party intending to adduce it has given to the accused reasonable notice of his intention together with

(a) a transcript of the private communication, where it will be adduced in the form of a recording, or a statement setting forth full particulars of the private communication, where evidence of the private communication will be given *viva voce*; and

(b) a statement respecting the time, place and date of the private communication and the parties thereto, if known.

(5) Any information obtained by an interception that, but for the interception would have been privileged, remains privileged and inadmissible as evidence without the consent of the person enjoying the privilege. 1973, c.50, s.2.

FURTHER PARTICULARS.

178.17 Where an accused has been given notice pursuant to subsection 178.16(4), any judge of the court in which the trial of the accused is being or is to be held may at any time order that further particulars be given of the private communication that is intended to be adduced in evidence. 1973, c.50, s.2.

POSSESSION, ETC.—Exemptions—Terms and conditions of licence.

178.18 (1) Every one who possesses, sells or purchases any electromagnetic, acoustic, mechanical or other device or any component thereof knowing that the design thereof renders it primarily useful for surreptitious interception of private communications is guilty of an indictable offence and liable to imprisonment for two years.

(2) Subsection (1) does not apply to

(a) a police officer or police constable in possession of a device or component described in subsection (1) in the course of his employment;

(b) a person in possession of such a device or component for the purpose of using it in an interception made or to be made in accordance with an authorization;

(c) an officer or servant of Her Majesty in right of Canada or a member of the Canadian Forces in possession of such a device or component in the course of his duties as such an officer, servant or member, as the case may be; and

Section 178.18—*continued*

(d) any other person in possession of such a device or component under the authority of a licence issued by the Solicitor General of Canada.

(3) A licence issued for the purpose of paragraph (2)(*d*) may contain such terms and conditions relating to the possession, sale or purchase of a device or component described in subsection (1) as the Solicitor General of Canada may prescribe. 1973, c.50, s.2.

FORFEITURE—Limitation.

178.19 (1) Where a person is convicted of an offence under section 178.11 or 178.18, any electromagnetic, acoustic, mechanical or other device by means of which the offence was committed or the possession of which constituted the offence, upon such conviction, in addition to any punishment that is imposed, may be ordered forfeited to Her Majesty whereupon it may be disposed of as the Attorney General directs.

(2) No order for forfeiture shall be made under subsection (1) in respect of telephone, telegraph or other communication facilities or equipment owned by a person engaged in providing telephone, telegraph or other communication service to the public or forming part of the telephone, telegraph or other communication service or system of such a person by means of which an offence under section 178.11 has been committed if such person was not a party to the offence. 1973, c.50, s.2.

DISCLOSURE OF INFORMATION—Exemptions.

178.2 (1) Where a private communication has been intercepted by means of an electromagnetic, acoustic, mechanical or other device without the consent, express or implied, of the originator thereof or of the person intended by the originator thereof to receive it, every one who, without the express consent of the originator thereof or of the person intended by the originator thereof to receive it, wilfully

(a) uses or discloses such private communication or any part thereof or the substance, meaning or purport thereof or of any part thereof, or

(b) discloses the existence thereof,

is guilty of an indictable offence and liable to imprisonment for two years.

(2) Subsection (1) does not apply to a person who discloses a private communication or any part thereof or the substance, meaning or purport thereof or of any part thereof or who discloses the existence of a private communication

(a) in the course of or for the purpose of giving evidence in any civil or criminal proceedings or in any other proceedings in which he may be required to give evidence on oath where

the private communication is admissible as evidence under section 178.16 or would be admissible under that section if it applied in respect of the proceedings;

(b) in the course of or for the purpose of any criminal investigation if the private communication was lawfully intercepted;

(c) in giving notice under section 178.16 or furnishing further particulars pursuant to an order under section 178.17;

(d) in the course of the operation of

(i) a telephone, telegraph or other communication service to the public, or

(ii) a department or agency of the Government of Canada,

if the disclosure is necessarily incidental to an interception described in paragraph 178.11 (2) (*c*) or (*d*); or

(e) where disclosure is made to a peace officer and is intended to be in the interests of the administration of justice. 1973, c.50, s.2.

DAMAGES—No damages where civil proceedings commenced—Judgment may be registered—Moneys in possession of accused may be taken.

178.21 (1) Subject to subsection (2), a court that convicts an accused of an offence under section 178.11 or 178.2 may, upon the application of a person aggrieved, at the time sentence is imposed, order the accused to pay to that person an amount not exceeding $5,000 as punitive damages.

(2) No amount shall be ordered to be paid under subsection (1) to a person who has commenced an action under Part I.1 of the *Crown Liability Act*.

(3) Where an amount that is ordered to be paid under subsection (1) is not paid forthwith, the applicant may, by filing the order, enter as a judgment, in the superior court of the province in which the trial was held, the amount ordered to be paid, and that judgment is enforceable against the accused in the same manner as if it were a judgment rendered against the accused in that court in civil proceedings.

(4) All or any part of an amount that is ordered to be paid under subsection (1) may be taken out of moneys found in the possession of the accused at the time of his arrest, except where there is a dispute as to ownership of or right of possession to those moneys by claimants other than the accused. 1973, c.50, s.2.

ANNUAL REPORT—Information respecting authorizations—Other information—Report to be laid before Parliament—Report by Attorneys General.

178.22 (1) The Solicitor General of Canada shall, as soon as possible after the end of each year, prepare a report relating to

(a) authorizations for which he and agents to be named in the report who were specially designated in writing by him for the purposes of section 178.12 made application, and

(b) authorizations given under section 178.15 for which peace

Section 178.22—*continued*

officers to be named in the report who were specially designated by him for the purposes of that section made application,

and interceptions made thereunder in the immediately preceding year.

(2) The report referred to in subsection (1) shall, in relation to authorizations and interceptions made thereunder, set forth

(a) the number of applications made for authorizations;

(b) the number of applications made for renewal of authorizations;

(c) the number of applications referred to in paragraphs *(a)* and *(b)* that were granted, the number of such applications that were refused and the number of applications referred to in paragraph *(a)* that were granted subject to terms and conditions;

(d) the number of persons identified in an authorization against whom proceedings were commenced at the instance of the Attorney General of Canada in respect of

(i) an offence specified in the authorization,

(ii) an offence other than an offence specified in the authorization but in respect of which an authorization may be given, and

(iii) an offence in respect of which an authorization may not be given;

(e) the number of persons not identified in an authorization against whom proceedings were commenced at the instance of the Attorney General of Canada in respect of

(i) an offence specified in such an authorization,

(ii) an offence other than an offence specified in such an authorization but in respect of which an authorization may be given, and

(iii) an offence other than an offence specified in such an authorization and for which no such authorization may be given,

and whose commission or alleged commission of the offence became known to a peace officer as a result of an interception of a private communication under an authorization;

(f) the average period for which authorizations were given and for which renewals thereof were granted;

(g) the number of authorizations that, by virtue of one or more renewals thereof, were valid for more than thirty days, for more than sixty days, for more than ninety days and for more than one hundred and eighty days;

(h) the offences in respect of which authorizations were given, specifying the number of authorizations given in respect of each such offence;

(i) a description of all classes of places specified in authorizations and the number of authorizations in which each such class of place was specified;

(j) a general description of the methods of interception involved in each interception under an authorization;

(k) the number of persons arrested whose identity became known to a peace officer as a result of an interception under an authorization;

(l) the number of criminal proceedings commenced at the instance of the Attorney General of Canada in which private communications obtained by interception under an authorization were adduced in evidence and the number of such proceedings that resulted in a conviction; and

(m) the number of criminal investigations in which information obtained as a result of the interception of a private communication under an authorization was used although the private communication was not adduced in evidence in criminal proceedings commenced at the instance of the Attorney General of Canada as a result of the investigations.

(3) The report referred to in subsection (1) shall, in addition to the information referred to in subsection (2), set forth

(a) the number of prosecutions commenced against officers or servants of Her Majesty in right of Canada or members of the Canadian Forces for offences under section 178.11 or section 178.2; and

(b) a general assessment of the importance of interception of private communications for the investigation, detection, prevention and prosecution of offences in Canada.

(4) The Solicitor General of Canada shall cause a copy of each report prepared by him under subsection (1) to be laid before Parliament forthwith upon completion thereof, or if Parliament is not then sitting, on any of the first fifteen days next thereafter that Parliament is sitting.

(5) The Attorney General of each province shall, as soon as possible after the end of each year, prepare and publish or otherwise make available to the public a report relating to

(a) authorizations for which he and agents specially designated in writing by him for the purposes of section 178.12 made application, and

(b) authorizations given under section 178.15 for which peace officers specially designated by him for the purposes of that section made application,

and interceptions made thereunder in the immediately preceding year setting forth, with such modifications as the circumstances require, the information described in subsections (2) and (3). 1973, c. 50, s.2.

WRITTEN NOTIFICATION TO BE GIVEN—Exception.

178.23 (1) The Attorney General of the province in which the application was made or the Solicitor General of Canada, as the case may be, shall notify in writing within ninety days next following the period for which the authorization was given the person who was the object of the interception pursuant to the authorization and shall, in a manner prescribed by regulation, certify to the court that issued the authorization that such person has been notified.

(2) Subsection (1) does not apply

(a) in the case of a warrant issued under subsection 16(2) of the *Official Secrets Act*, or

(b) where the Attorney General of the province in which the application is made or the Solicitor General of Canada, as the case may be, certifies within the said ninety days in a manner prescribed by regulations to the judge who granted the authorization that the investigation is continuing and the judge is of the opinion that the interests of justice require that a delay of a determinate reasonable length be granted, in which case the judge may grant a determinate reasonable delay. 1973, c.50, s.2.

PART V

DISORDERLY HOUSES, GAMING AND BETTING

Interpretation

DEFINITIONS—"Bet"—"Common bawdy-house"—"Common betting house"—"Common gaming house"—"Disorderly house"—"Game"—"Gaming equipment"—"Keeper"—"Place"—Exception—Onus—Effect when game partly played on premises—"Public place".

179. (1) In this Part

"bet" means a bet that is placed on any contingency or event that is to take place in or out of Canada, and without restricting the generality of the foregoing, includes a bet that is placed on any contingency relating to a horse-race, fight, match or sporting event that is to take place in or out of Canada;

"common bawdy-house" means a place that is

(a) kept or occupied, or

(b) resorted to by one or more persons

for the purpose of prostitution or the practice of acts of indecency;

"common betting house" means a place that is opened, kept or used for the purpose of

(a) enabling, encouraging or assisting persons who resort thereto to bet between themselves or with the keeper, or

S-312/74

IN THE GENERAL SESSIONS OF THE PEACE

IN AND FOR THE JUDICIAL DISTRICT OF YORK

HER MAJESTY THE QUEEN

- vs. -

BARTON ROY LESARGE
~~VIRGINIA IRENE LUNN~~
and
~~WILLIAM DANIEL LUNN~~

Before: His Honour JUDGE MARTIN

(Judgment on Admissibility of Evidence)

APPEARANCES:

MR. F. ARMSTRONG	Counsel for the Crown
MR. A. DEMPSEY	Counsel for the Accused - Barton Roy Lesarge

Minister of Justice
c/o Jack Waissman
New Court House
1 Notre Dame St. E.
Room 4.122
Montreal Que.

The Court House,
Toronto, Ontario.

September 23rd, 1974.

JUDGMENT

THE COURT: This is my judgment in the case of Her Majesty The Queen against Barton Roy Lesarge with respect to the Protection of Privacy Act.

The accused Lesarge appeared before me for trial on September 16th on an indictment in which he is charged on five counts. Count 2 charges him with being in possession of a quantity of liquor; Count 3 charges him with the theft of a tractor; Count 4 charges him with being in possession of that same tractor; Count 5 charges him with the theft of a Can Car aluminum Silver Trailer; and Count 6, alternatively, charges him with being in possession of the same trailer.

At the commencement of the trial Mr. Armstrong, acting as counsel for the Crown, proposed to introduce certain evidence, and asked for a voir dire with respect to wire-tapping evidence. Mr. Dempsey, as defence, opposed the introduction of this evidence, saying it was inadmissible by reason of Section 178.16 of the Criminal Code. This legislation is known as the Protection of Privacy Act, 1973-74 (Canada), Chapter 50, which controls wire-tapping and the use of

other electromagnetic, acoustic and mechanical devices for the interception of private communications. This Act was proclaimed in force on June 30th, 1974.

The provisions of the Protection of Privacy Act are now incorporated in the Criminal Code, Section 178.1 to 178.23. Section 178.16, sub-section (1)(a) is as follows:

> "A private communication that has been intercepted and evidence obtained directly or indirectly as a result of information acquired by interception of a private communication are both inadmissible as evidence against the originator thereof or the person intended by the originator thereof to receive it unless
>
> "(a) the interception was lawfully made."

The relevant parts of Section 178.12 of the Criminal Code are as follows:

> "An application for an authorization shall be made ex parte and in writing to a judge of a superior court of

criminal jurisdiction, or a judge as defined in section 482 and shall be signed by the Attorney General of the province in which the application is made or the Solicitor General of Canada or an agent specifically designated in writing for the purposes of this section."

It then goes on to set out the Solicitor General of Canada and others.

Under the provisions of the Protection of Privacy Act, which are now incorporated in the Criminal Code, before the police can do any wire-tapping they must obtain the authorization of a judge of the Supreme Court or County Court in the Province of Ontario.

The policy with respect to the use of wire-tapping equipment by members of the Metropolitan Toronto Police prior to the coming into force of the Protection of Privacy Act was adopted and set forth by the Metropolitan Board of Commissioners of Police at meetings held in Toronto on March 27th, 1969, and on October 28th, 1971. The minutes of these meetings have

been filed as Exhibits 2 and 3 before me on the voir dire. The policy was that the use of any audio surveillance or wire-tapping equipment by any member of the Metropolitan Toronto Police Department would only be done with the approval in each case of the chief of police, and only when, in his opinion, there was reasonable and probable cause to believe that a criminal offence had been or was about to be committed.

Staff Sergeant Robert Stirling, who was the acting inspector of the Intelligence Squad on August 10th, 1973, gave evidence before me in which he indicated that he had received information from his officers, and from others, that important information relevant to these offences could be obtained by the use of wire-tapping equipment at 42 Foch Avenue, Etobicoke. The telephone number was 251-0362. He applied to Chief Adamson for authorization and found that Chief Adamson was away. He then arranged to see Deputy Chief Simmons, who was the acting chief in the absence of Chief Adamson. Deputy Simmons authorized the use of the wire-tapping equipment at the above address. As a result, Staff Sergeant Stirling instructed Detective Miller and other officers to install wire-tapping

equipment at 42 Foch Avenue, Etobicoke; telephone number 251-0362.

Chief Adamson concurred in Deputy Simmons' approval when he returned to the office on the Monday morning.

Detective Miller, a member of the Intelligence Squad, gave evidence that on August 10th, 1973, he installed wire-tapping equipment at 42 Foch Avenue, Etobicoke (telephone as above). He installed a transmitter to the telephone service and the receiver was placed in the trunk of an unmarked police car parked about a block away. After the installation he made tests of the equipment and found that it was in working order.

Mr. Dempsey's argument is that Section 178.16 of the Criminal Code is concerned with evidence and is therefore a procedural and not a substantive provision, and therefore is retrospective rendering the evidence in this case inadmissible.

Maxwell in his book on the interpretation of statutes states at page 215:

"It is a fundamental rule of English law that no statute shall be construed

to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication."

There is no provision in the Act purporting to have a retrospective operation nor, for reasons I will later give, does such a construction arise by necessary and distinct implication. However, the law is clear that the presumption against retrospective construction does not apply to enactments which affect only the procedure and practice of the courts. (See Maxwell's Interpretation of Statutes, page 222)

Since Section 178.16(1) appears substantially to be a procedural provision, should it be given in the circumstances a retrospective operation? The answer to this question, in my view, depends in part upon whether wire-tapping was illegal prior to June 30th, 1974. Mr. Dempsey submits that wire-tapping was illegal prior to June 30th, 1974, by reason of Section 112 of the Telephone Act, R.S.O. 1970, Chapter 457, Section 25 of the Bell Telephone Act, 1880 (Canada), Chapter 67, and Section 1(a) of the Bill of

Rights. I will set out the relevant sections of those statutes.

Section 25 of the Bell Telephone Act is as follows:

"Any person who shall wilfully or maliciously injure, molest or destroy any of the lines, posts or other material or property of the Company, or in any way wilfully obstruct or interfere with the working of the said telephone lines, or intercept any message transmitted thereon, shall be guilty of a misdemeanour."

Section 112 of the Telephone Act is as follows:

"Every person who, having acquired knowledge of any conversation or message passing over any telephone line not addressed to or intended for such person, divulges the purport or substance of the conversation or message, except when lawfully authorized or directed to do so, is guilty of an

offence and on summary conviction is liable to a fine of not more than fifty dollars or to imprisonment for a term of not more than thirty days, or to both."

The Canadian Bill of Rights, Section 1, is as follows:

"It is hereby recognized and declared that in Canada there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and fundamental freedoms, namely,

"(a) the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law."

A breach of Section 25 of the Bell Telephone Act does not constitute a criminal offence. According to the judgment of Mr. Justice Arnup in the case of Regina v. Chapman and Grange, reported in

11 C.C.C., 2d Series, at page 84. I am quoting from page 92:

> "As yet Parliament has not passed any legislation with respect to wire-tapping or other misuse of private telephone calls. Section 25 of the Bell Telephone Act obviously does not constitute such parliamentary action; it is found in a private act whose validity rests upon the fact that the Bell Telephone Company was and is a work or undertaking, analogous to a telegraph undertaking, connecting one province with another, or extending beyond the limits of the province, and therefore within the powers of Parliament under s.92, head 10a of the B.N.A. Act, 1867."

In any event it has been held that wire-tapping cannot come within the provisions of Section 25 of the Bell Telephone Act in circumstances identical to those in this case since it does not

impede the conversation between the parties; nor impede its progress; nor create any disturbance of the conversation which is required in order to constitute an interference or interception prohibited by the said Section 25. (See Re Copeland and Adamson et al at page 399 and page 400)

As to Section 112 of the Telephone Act, it is clear that a breach thereof constitutes an offence except when the person who breaches the section is lawfully authorized or directed to do so. It was held by Mr. Justice Grant in Re Copeland and Adamson et al, (1972) 7 C.C.C., 2d Series, page 393, that a breach of this section in circumstances virtually identical to the circumstances in this case was not illegal as the action had been approved by the appropriate officer of the Metropolitan Toronto Police Force

With respect to the Bill of Rights, Section 1(a), Mr. Dempsey's submission was rejected by Mr. Justice Grant in Re Copeland and Adamson et al (citation given overleaf) at page 401 and following (see third paragraph, page 401):

"Such section is only declaratory

of the rights therein described and makes no provision for enforcing them. At common law a person apparently had no legally enforceable right to the privacy of his conversation even if it be held on the telephone. Does the right to enjoyment of one's property declared by such Bill to exist, include freedom from intrusion therein by way of surveillance of one's telephone conversations therefrom? In the course of a criminal trial (R. v Pearson (1968) 66 W.W.R. 380) where evidence of conversations by the accused was obtained by the police by means of secretly recorded incoming and outgoing calls on the telephone line by electronic devices, Dohm, J.,stated at pp.381-2:

"'There is no law in Canada at the present time prohibiting the use of recorded evidence obtained by wiretapping, as was done here. In

"'my opinion, there is no violation of the Canadian Bill of Rights, as one counsel urged.'"

I am in respectful agreement with Mr. Justice Grant in Re Copeland and Adamson regarding the inapplicability of Section 112 of the Telephone Act and Section 1(a) of the Bill of Rights.

By virtue of the foregoing authorities for the purposes of the criminal law, in the circumstances of this case, audio surveillance or wire-tapping was not per se illegal prior to June 30th, 1974.

Mr. Armstrong submits that by virtue of Section 178.16(1)(a) that the interception being lawfully made prior to June 30th, 1974, it is therefore admissible under the section. I do not agree. In Mr. Manning's book, the Protection of Privacy Act, at page 113, the learned author states:

"Section 178.16(1)(a) states that the private communication is inadmissible unless the interception was 'lawfully made.' This phrase refers to the lawful methods of

"interception and must mean those set out in the (Protection of Privacy) Act."

I agree with Mr. Manning's interpretation as the sole way an interception may be lawfully made is through compliance with the provisions of the Protection of Privacy Act.

I return now to the question that Section 178.16 should be given retrospective operation. In my view it should not and I adopt an argument advanced by Mr. Manning in his book, the Protection of Privacy Act, at page 113:

"... that as the substantive provisions (which do alter the character and legal effect of any transaction already entered into, namely the making illegal of acts previously legal) do not have any retrospective effect and as the provisions of Section 178.16 are so inextricably bound up with the substantive provisions, they ought not to be given retrospective

"construction."

I am also in agreement with another view expressed by Mr. Manning in page 113 of his book. As wire-tapping was not, in my judgment, illegal in the circumstances existing in this case, the instant case, prior to the coming into force of the Protection of Privacy Act, and since a person who was legally wire-tapping prior to that time could not have obtained approval of a judge because the Act was not in force, and since Parliament in the Act itself recognizes legal wire-tapping, the public interest is best served by not giving Section 178.16 a retrospective effect.

For the foregoing reasons I have given I am going to admit the wire-tapping evidence and its derivatives in this case.

Certified Correct:

John E. Henderson

(C.S.R.)

Official Court Reporter.

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C A N A D A

PROVINCE DE QUEBEC
DISTRICT DE MONTREAL

COUR DU BANC DE LA REINE
(juridiction criminelle)

No 74-9150

Le 18ième jour d'octobre 1974

PRESIDENT:
L'HONORABLE JUGE CLAUDE BISSON

SA MAJESTE LA REINE,

-vs-

ANDRE DESJARDINS

-et-

JEAN-CLAUDE SUREAU

J U G E M E N T

Vu les dispositions de l'article 576.1 du Code criminel, le présent jugement ne pourra être publié avant la fin du présent procès.

André Desjardins et Jean-Claude Sureau sont inculpés d'extorsion et de complot pour commettre ce crime, contrairement aux articles 305 et 423 du Code criminel.

La poursuite désire mettre en preuve les enregistrements sonores de cinq conversations téléphoniques auxquelles André Desjardins aurait participé comme suit:

14 juin 1974, vers 8:15 heures:

Conversation téléphonique entre André Desjardins et Reynald Bertrand.

15 juin 1974, vers 10:45 heures:

Téléphone d'André Desjardins à Roger Perreault.

15 juin 1974, vers 13:15 heures:

Conversation téléphonique entre André Desjardins et Yvon Dansereau.

16 juin 1974, vers 20:30 heures:

Conversation téléphonique entre André Desjardins et Roger Perreault.

18 juin 1974:

Conversation téléphonique entre André Desjardins et Paul Lapointe.

Afin que le juge puisse décider de l'admissibilité en preuve de ces cinq conversations téléphoniques, la poursuite désire faire une preuve de voir-dire pour permettre au soussigné de s'assurer de l'authenticité, de la fidélité et de l'intégrité des enregistrements.

Toutefois, la défense s'objecte à un tel voir-dire soutenant que quelle que soit la qualité des enregistrements, ils ne peuvent de toute manière être mis en preuve parce qu'une telle preuve ne serait pas légale.

LA LOI SUR LA PROTECTION DE LA VIE PRIVEE

Il s'agit du chapitre 50 de 21-22 Eliz. II, sanctionné le 14 janvier 1974.

Cette loi comporte sept articles et son but principal est d'ajouter au Code criminel la partie IV.1, soit les articles 178.1 à 178.23.

L'article 7 prévoit que la loi devait entrer en vigueur à une date qui serait fixée par proclamation.

Or, le 21 mai 1974, le Gouverneur général du Canada émettait une proclamation décrétant "que la Loi sur la protection de la vie privée entrera en vigueur et deviendra exécutoire à compter du 30 juin 1974".

Cette proclamation a été enregistrée sous le numéro TR/74-68 le 12 juin 1974 et a été publiée dans la Gazette du Canada, partie II, volume 108, numéro 11, édition du 12 juin 1974.

Il ne fait pas de doute que les conversations téléphoniques, qui font l'objet de la présente décision, sont de nature telle qu'elles auraient été régies par la loi nouvelle si elles avaient été interceptées le ou après le 30 juin 1974.

L'article 178.11 déclare acte criminel l'interception d'une communication privée sauf s'il y a eu consentement de la personne interceptée ou si la personne qui intercepte a obtenu les autorisations dont les modalités sont fixées aux articles suivants.

Puis, à l'article 178.16, on décrète ce qui suit:

(1) " Une communication privée qui a été interceptée et une preuve obtenue directement ou indirectement grâce à des renseignements recueillis par l'interception d'une communication privée sont toutes deux inadmissibles en preuve contre son auteur ou la personne à laquelle son auteur la destinait à moins

a) que l'interception n'ait été faite légalement; ou

b) que l'auteur de la communication privée ou la personne à laquelle son auteur la destinait n'ait expressément consenti à ce qu'elle soit admise en preuve. "

(2) ....

(3) " Le paragraphe (1) s'applique à toutes les poursuites pénales ainsi qu'à toutes les poursuites civiles et autres affaires quelles qu'elles soient de la compétence du Parlement du Canada. "

En l'espèce, la loi n'étant entrée en vigueur que le 30 juin 1974, peut-on quand même y assujettir des enregistrements de conversations téléphoniques des 14, 15, 16 et 18 juin pour les fins d'une preuve que l'on veut présenter en octobre 1974.

Certaines observations s'imposent.

D'abord, il convient de noter que si le législateur a

créé un crime au paragraphe (1) de l'article 178.11, il ne s'agissait pas, si l'on peut s'exprimer ainsi, d'un crime absolu puisqu'il n'y a pas de crime si, d'une part, la personne interceptée a donné son autorisation ou si d'autre part, une autorisation a été obtenue des autorités compétentes.

Donc, on ne peut dire que les 14, 15, 16 et 18 juin, ceux qui ont intercepté les communications téléphoniques d'André Desjardins se sont empressés de poser des actes qui, deux semaines plus tard, seraient de toute nécessité devenus des crimes.

Par ailleurs, il faut bien reconnaître qu'avant le 30 juin 1974, l'interception non autorisée d'une communication téléphonique ne constituait pas un crime.

De plus, si avant le 30 juin 1974, l'article 7 de la Loi d'interprétation, chapitre I 23, des S.R.C. 1970, pouvait permettre de solliciter une autorisation pour mettre en place un système d'écoute électronique à compter de 00.01 heure le 30 juin 1974, aucune autorisation ne pouvait être donnée pour toute interception devant avoir lieu avant ce moment précis.

Dès lors, les 14, 15, 16 et 18 juin, rien ne pouvait être fait pour obtenir des autorisations pour des interceptions devant être faites ces jours-là.

En la présente espèce, les communications, pour l'une, précèdent de quelques heures les événements relatés dans la preuve et qui se sont déroulés le 14 juin, et pour les quatre autres, suivent les mêmes événements dans les jours immédiats.

Revenant à l'article 178.16, y a-t-il lieu de lui donner un effet rétroactif et de déclarer qu'il constitue une fin de non-recevoir absolue à la mise en preuve, à compter du 30 juin 1974, de communications interceptées avant cette date?

Il importe de noter que dans sa rédaction de l'article 178.16 (1), le législateur n'a pas dit que ne seront admissibles en preuve que les communications qui ont été interceptées conformément au chapitre 50.

Se serait-il prononcé de la sorte, on aurait pu soutenir

que le législateur avait indiqué qu'il entendait que les communications interceptées avant l'entrée en vigueur de la loi, le 30 juin 1974, soient désormais inadmissibles.

Il a plutôt dit qu'une communication est inadmissible en preuve à moins qu'on l'ait interceptée légalement.

Il est de doctrine reconnue qu'une loi n'a d'effet rétroactif que dans la mesure où le législateur l'a indiqué, sinon de façon expresse du moins implicite.

Dans "Young v. Adams" publié à 1898 A.C. 469, le Conseil privé a prononcé:

> " Retrospective effect ought not to be given to a statute unless an intention to that effect is expressed in plain and unambiguous language. "

Plus particulièrement, Lord Watson, prononçant le jugement au nom de ses collègues, s'est exprimé comme suit à la page 476:

> " ... their Lordships are of opinion that the rule laid down by Erle C.J. in Midland Ry. Co. v. Pye (3) ought to apply. They think that, in a case like the present, the learned Chief Justice was right in saying that a retrospective operation ought not to be given to the statute, "unless the intention of the Legislature that it should be so construed is expressed in plain and unambiguous language, because it manifestly shocks one's sense of justice that an act legal at the time of doing it should be made unlawful by some new enactment". "
>
> (3) 10 C.B. (N.S.) 191.

Mais, nous dit la défense, la prescription de l'article 178.16 en est une de procédure et il est de doctrine et de jurisprudence constantes qu'on doit donner un effet rétroactif à une loi de procédure.

Si cette proposition est exacte lorsque intervient une législation qui apporte des modifications à la procédure à suivre pour mettre en application un droit substantif déjà existant, je ne crois pas qu'on puisse étendre cette application lorsque la procédure est édictée en même temps que l'on crée le droit substan-

tif.

Je me réfère maintenant à un arrêt de la Chambre des Lords dans "Attorney General and Vernazza" publié à 1960 A.C. 965.

A la page 977, Lord Denning s'exprime comme suit:

> " If the new Act affects Mr. Vernazza's substantive rights, it will not be held to apply to proceedings which have already commenced, unless a clear intention to that effect is manifested, see Colonial Sugar Refining Co. Ltd. v. Irving. [3] But if the new Act affects matters of procedure only, then prima facie it applies to all actions, pending as well as future: for, as Lord Blackburn said: "Alterations in the form of procedure are "always retrospective, unless there is some good reason or other "why they should not be," see Gardner v. Lucas.[4]
>
> 3 (1905) A.C. 369.
> 4 (1878) 3 App. Cas. 582, 603, H.L.

On peut également citer par analogie la décision de la Cour suprême du Canada dans "Howard Smith Paper Mills, Ltd., et al v. The Queen", publiée à 118 C.C.C. 321.

Dans cette affaire, on a décidé que l'article 41 de la Loi des enquêtes sur les coalitions, tel que modifié en 1952, apportait un changement révolutionnaire dans le mode de procéder et on lui a accordé un effet rétroactif considérant, suivant la teneur du sommaire, que:

> " ... it creates no offence and takes away no defence nor does it render criminal any course of conduct which was not already so declared before its enactment or alter the legal effect of any previous transaction. "

En la présente espèce, le chapitre 50 n'a pas fait qu'établir des procédures. Au contraire, les procédures qu'on y a édictées l'ont été comme corollaires d'un droit nouveau sur lequel on légiférait en édictant un nouveau crime.

Comment pourrait-on soutenir que les procédures que l'on a prévues puissent s'appliquer à des actes qui n'étaient pas des crimes avant le 30 juin 1974.

Rappelons également que l'interception de communications privées n'est pas dans tous les cas un crime puisqu'il s'agit d'une pratique parfaitement licite si l'on a le consentement de la personne interceptée ou si l'on obtient l'autorisation judiciaire prévue.

Comme conclusion, même s'il pouvait être soutenu, avec raison, que 178.16 constitue une règle de procédure, on ne peut lui donner aucun effet rétroactif parce que la législation qui l'a édicté forme un tout et que 178.16 n'est que le corollaire d'un crime nouveau que l'on créait.

Dans les circonstances, les communications privées interceptées avant le 30 juin 1974 ne sont pas soumises au chapitre 50 et la preuve peut en être faite devant le tribunal depuis le 30 juin 1974, en suivant les mêmes modalités qu'antérieurement à cette date.

Sur le tout, le tribunal en vient à la conclusion que, sujet à déterminer par une preuve de voir-dire l'authenticité, la fidélité et l'intégrité des enregistrements des cinq conversations téléphoniques d'André Desjardins avec diverses personnes les 14, 15, 16 et 18 juin 1974, rien n'empêche que ces enregistrements ne soient aujourd'hui mis en preuve.

Dans les circonstances, le tribunal ORDONNE qu'une preuve de voir-dire soit faite.

Claude C. Bisson

J.C.B.R.

DOCTRINE ET JURISPRUDENCE CONSULTEES

SUR LA RETROACTIVITE DES LOIS

I

Craies on Statute Law, 7e édition 1971, chapitre intitulé "Retrospective Enactments", aux pages 387 à 406.

II

Maxwell on Interpretation of Statutes, 12e édition 1969, chapitre intitulé "Retrospective Operation of Statutes", pages 215 à 227.

SUR LA RETROACTIVITE DU CHAPITRE 50

I

M. Manning - "Protection of Privacy Act" 1974, chapitre intitulé "Admissibility of Evidence obtained prior of the coming into force of this Act". pages 108 à 115.

II

Décision de monsieur le juge Martin de la Cour de comté de L'Ontario, prononcée à Toronto le 23 septembre 1974 dans la cause "Her Majesty the Queen -vs- Barton Roy Lesarge", dossier S-312/74.

Me Gérard Girouard, procureur de la Couronne.
Me Michel Proulx, procureur d'André Desjardins.
Me Pierre Morneau, procureur de Jean-Claude Sureau.

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CHAPITRE 286

Loi des compagnies de télégraphe et de téléphone

PREMIÈRE PARTIE

DES COMPAGNIES DE TÉLÉGRAPHIE

SECTION I

DE LA FORMATION DE LA COMPAGNIE

Obtention de charte.

1. Trois personnes majeures au moins peuvent, en observant les formalités ci-après requises, s'adresser au lieutenant-gouverneur en conseil, et en obtenir une charte les autorisant à construire une ou des lignes de télégraphe électrique, avec des embranchements y conduisant ou en divergeant d'un point à un autre dans cette province. S. R. 1941, c. 297, a. 2.

Requête: Contenu.

2. La demande de constitution en corporation est faite par requête contenant:

1° Le nom corporatif que l'on se propose de donner à la compagnie;

2° La désignation de la ligne de télégraphe à construire et les routes que doit suivre cette ligne;

3° Le capital de la compagnie;

4° Le montant de chaque action;

5° Les noms, prénoms, qualités et adresses des administrateurs provisoires;

6° Le nom de la municipalité où la compagnie a l'intention de conduire ses opérations.

Signature.

Les signatures à la requête sont apposées en présence d'un notaire ou de deux témoins. S. R. 1941, c. 297, a. 3.

Renseignements.

3. Le ministre des travaux publics peut exiger tous renseignements, documents,

CHAPTER 286

Telegraph and Telephone Companies Act

PART I

TELEGRAPH COMPANIES

DIVISION I

FORMATION OF THE COMPANY

Obtaining charter.

1. Any number of persons of the age of majority, not less than three, may, by observing the formalities hereinafter required, apply to the Lieutenant-Governor in Council and obtain a charter authorizing them to build a line or lines of electric telegraph, with branches leading to or from the same, from one point to another in this Province. R. S. 1941, c. 297, s. 2.

Petition: Contents.

2. The application for incorporation shall be made by petition containing:

(1) The proposed corporate name of the company;

(2) A description of the line or lines of telegraph to be built, and the route or routes by which such lines are to pass;

(3) The capital of the company;

(4) The amount of each share;

(5) The names in full, callings and addresses of the provisional directors;

(6) The name of the municipality in which the operations of the company are intended to be carried on.

Signature.

The signatures to the petition shall be subscribed before a notary or two witnesses. R. S. 1941, c. 297, s. 3.

Information.

3. The Minister of Public Works may call for the production of any information,

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témoignages et affidavit qu'il trouve nécessaires ou utiles, dans le but de s'assurer de la vérité des faits contenus dans la requête. S. R. 1941, c. 297, a. 4.

documents, evidence and affidavits that he may deem necessary or expedient in order to satisfy himself of the truth of the facts alleged in the petition. R. S. 1941, c. 297, s. 4.

Lettres patentes.

4. 1. Après l'accomplissement des formalités ci-dessus requises, et sur le rapport du ministre des travaux publics, le lieutenant-gouverneur en conseil peut octroyer aux requérants, par lettres patentes sous le grand sceau, une charte les constituant en corporation pour les fins mentionnées dans leur requête.

4. (1) After the above formalities have been observed, and on the report of the Minister of Public Works, the Lieutenant-Governor in Council may grant to the petitioners, by letters patent under the Great Seal, a charter constituting them a corporation for the objects set forth in their petition. Letters patent.

Contenu.

2. Les lettres patentes font l'énumération des allégations principales contenues dans la requête.

(2) The letters patent shall recite the principal facts alleged in the petition. Contents.

Publication.

3. Les lettres patentes sont immédiatement publiées dans la *Gazette officielle de Québec* et, à compter du jour de cette publication, les requérants ainsi que les autres personnes qui deviennent subséquemment actionnaires de la compagnie sont une corporation sous le nom mentionné dans les lettres patentes. S. R. 1941, c. 297, a. 5.

(3) The letters patent shall immediately thereafter be published in the *Quebec Official Gazette*, and, from the date of such publication, the petitioners and such others as may afterwards become shareholders in the company shall be a corporation, with the name mentioned in the letters patent. R. S. 1941, c. 297, s. 5. Publication.

Changements.

5. Tout changement dans les dispositions des lettres patentes n'est fait que du consentement des deux tiers des actionnaires avec l'approbation du lieutenant-gouverneur en conseil. S. R. 1941, c. 297, a. 6, parag. 1.

5. No change in the provisions of the letters patent shall be made without the consent of two-thirds of the shareholders and the approval of the Lieutenant-Governor in Council. R. S. 1941, c. 297, s. 6, subsec. 1. Changes.

Formalités.

6. Lorsqu'il s'agit d'obtenir des changements dans les dispositions des lettres patentes, les administrateurs, après avoir obtenu l'assentiment des deux tiers des actionnaires, présentent une requête au lieutenant-gouverneur en conseil, mentionnant les changements demandés, le but de ces changements et l'assentiment des deux tiers des actionnaires; le lieutenant-gouverneur en conseil, sur le rapport du ministre des travaux publics, peut accorder des lettres patentes supplémentaires modifiant les premières, lesquelles sont publiées dans la *Gazette officielle de Québec*, et prennent effet du jour de leur publication. S. R. 1941, c. 297, a. 6, parag. 2.

6. Whenever changes are to be made in the provisions of the letters patent, the directors, with the consent of two-thirds of the shareholders, shall present a petition to the Lieutenant-Governor in Council, setting forth the changes asked for, the object of such changes and the consent of two-thirds of the shareholders; and the Lieutenant-Governor in Council, on the report of the Minister of Public Works, may grant supplementary letters patent amending the first, which supplementary letters patent shall be published in the *Quebec Official Gazette*, and shall take effect from the day of their publication. R. S. 1941, c. 297, s. 6, subsec. 2. Formalities.

SECTION II

DES POUVOIRS ET DES DEVOIRS GÉNÉRAUX DE LA COMPAGNIE ET DE SES OFFICIERS

DIVISION II

GENERAL POWERS AND DUTIES OF THE COMPANY AND ITS OFFICERS

Biens-fonds.

7. Toute compagnie ainsi formée a plein pouvoir d'acheter, recevoir, posséder

7. Every company formed as aforesaid shall have power to purchase, take, Holding land, etc.

et transporter des biens-fonds, mais ceux seulement qui sont nécessaires pour transiger commodément les affaires et pour bien conduire les opérations de la compagnie. S. R. 1941, c. 297, a. 7.

hold and convey such immoveable property and such only as may be necessary for the convenient transaction of its business and for effectually carrying on its operations. R. S. 1941, c. 297, s. 7.

Administrateurs, etc.

8. Elle peut nommer les administrateurs, officiers et agents, et faire les règlements qui peuvent être nécessaires pour la transaction de ses affaires, pourvu que tels règlements ne soient pas incompatibles avec les lois de cette province. S. R. 1941, c. 297, a. 8.

Directors, etc.

8. It may appoint such directors, officers and agents, and make such regulations and by-laws, not inconsistent with the laws of this Province, as may be necessary in the transaction of its business. R. S. 1941, c. 297, s. 8.

Construction de lignes.

9. Elle peut construire les lignes de télégraphe, désignées dans ses lettres patentes, sur les terrains qu'elle a acquis, ou sur ceux qui lui ont été cédés par les parties ayant droit de faire cette cession, et le long de et à travers les chemins publics, ou à travers tout terrain ou toute étendue d'eau dans cette province, en érigeant les constructions nécessaires, y compris les poteaux, jetées ou culées destinés à supporter les cordes ou fils desdites lignes, pourvu qu'elles ne soient pas érigées de manière à incommoder le public qui se sert de ces chemins, ni à gêner le libre accès à toute maison ou autre bâtiment construit dans ce voisinage, ni à interrompre la navigation.

9. It may build the lines of telegraph described in its letters patent upon any lands purchased by it, or the right to carry its line over which has been conceded to it by the parties having a right to make such concession, and along any and upon any public roads, or across any land or any of the waters within this Province, by the erection of the necessary fixtures, including posts, piers or abutments, for sustaining the cords or wires of such lines, provided the same be not so built as to incommode the public use of such roads, or to impede the free access to any house or other building erected in the vicinity of the same, or to interrupt the navigation of such waters.

Building lines.

Expropriation.

Dans le cas où la compagnie veut poser ses poteaux et ses lignes et ne peut s'entendre avec le propriétaire du terrain au sujet de l'indemnité à payer, elle pourra, exproprier la partie de terrain strictement nécessaire pour y poser ses poteaux, avec en plus une servitude comportant le droit de poser ses poteaux et ses fils et un droit de passage sur le terrain pour les réparer et les tenir en bon état.

When the company wishes to put up its poles and lines and cannot agree with the owner of the land respecting the compensation to be paid, it may expropriate the portion of land strictly necessary to put up its poles thereon, with, in addition, a servitude conveying the right to put up its poles and wires and the right to pass over the land to repair and keep them in good order.

Expropriation.

Lignes existantes.

Elle peut aussi, avec l'approbation du ministre des travaux publics, louer ou acquérir, en totalité ou en partie, une ligne déjà construite.

It may also, with the approval of the Minister of Public Works, lease or acquire, in whole or in part, a line already constructed.

Existing lines.

Prolongation de lignes.

Elle peut également prolonger ou étendre sa ligne, au moyen de constructions ou au moyen de l'acquisition ou de la location d'une ligne déjà établie au delà des endroits, lieux et routes indiqués dans ses lettres patentes ou son certificat. S. R. 1941, c. 297, a. 9.

It may also prolong or extend its line, by building or by the purchase or lease of an already established line beyond the localities, places and roads indicated in its letters patent or its memorandum. R. S. 1941, c. 297, s. 9.

Extending lines.

Route.

10. Rien de contenu dans la présente loi n'est censé conférer à telle compagnie

10. Nothing in this act shall confer on any such company the right of building a

Bridges.

le droit de construire un pont sur des cours d'eau navigables. S. R. 1941, c. 297, a. 10.

bridge over any navigable water. R. S. 1941, c. 297, s. 10.

Dettes.

11. Nulle telle compagnie ne peut contracter de dettes pour un montant excédant la moitié de son capital. S. R. 1941, c. 297, a. 11.

11. No such company may contract debts exceeding one-half of its capital stock. R. S. 1941, c. 297, s. 11. Debts.

Signature.

12. Tous les actes constitutifs ou recognitifs des dettes assumées par la compagnie, doivent être signés par le président et le trésorier. S. R. 1941, c. 297, a. 12.

12. All evidences and acknowledgements of debt issued by such company shall be signed and issued by its president and treasurer. R. S. 1941, c. 297, s. 12. Signature.

Compagnies formées avant 1934.

13. Toute association ou compagnie de télégraphe, organisée le ou avant le 7 mars 1934, et en opération à cette date, continue son existence nonobstant la date fixée dans le certificat déposé au bureau du secrétaire de la province, comme étant celle à laquelle cette association ou compagnie de télégraphe devait cesser d'exister. S. R. 1941, c. 297, a. 13.

13. Any telegraph association or company organized on or before the 7th of March, 1934 and operating at such date shall continue to exist notwithstanding the date fixed in the memorandum filed in the office of the Provincial Secretary, as being that on which such association or company shall cease to exist. R. S. 1941, c. 297, s. 13. Companies created before 1934.

Liquidation.

14. Une telle association ou compagnie de télégraphe ainsi continuée cesse d'exister lorsque la majorité des associés décide, à une assemblée régulièrement convoquée à cette fin, de liquider les affaires de l'association ou compagnie. S. R. 1941, c. 297, a. 14.

14. Any such telegraph association or company so continued shall cease to exist when the majority of the partners decide, at a meeting regularly called for such purpose, to wind-up the business of the association or company. R. S. 1941, c. 297, s. 14. Winding-up.

Transmission des dépêches.

15. Toute compagnie en possession d'une ligne de télégraphe ouverte au public doit, excepté dans les cas prévus dans l'article 16, transmettre toutes les dépêches dans l'ordre où elles sont reçues, sous peine d'une amende de pas moins de vingt ni de plus de cent dollars, recouvrable, avec les frais de poursuite, par la personne qui souffre du fait que l'ordre d'expédition de sa dépêche a été interverti. S. R. 1941, c. 297, a. 15.

15. Every company in possession of any telegraph line in operation shall, except in cases provided for in section 16, forward all despatches in the order in which they are received, under a penalty of not less than twenty nor more than one hundred dollars, to be recovered, with costs of suit, by the person or persons whose despatch has been sent out of its order and who is or are aggrieved thereby. R. S. 1941, c. 297, s. 15. Transmitting despatches.

Dépêches privilégiées.

16. Lorsqu'une personne attachée à l'administration de la justice, ou toute autre personne à ce autorisée par le secrétaire de la province l'exige, toute dépêche relative à l'administration de la justice, à l'arrestation des criminels, à la découverte ou prévention des crimes et les dépêches du gouvernement, doivent être transmises de préférence à toute autre dépêche. S. R. 1941, c. 297, a. 16.

16. Any message in relation to the administration of justice, arrest of criminals, the discovery or prevention of crime, and Government messages or despatches, shall always be forwarded in preference to any other message or despatch, if required by persons connected with the administration of justice, or by any person thereunto authorized by the Provincial Secretary. R. S. 1941, c. 297, s. 16. Privileged messages.

Secret.

17. Tout télégraphiste, ou toute autre personne employée par une compagnie de télégraphe, qui divulgue le contenu d'une dépêche privée, est passible d'une amende n'excédant pas cent dollars ou de l'emprisonnement pour un espace de pas plus de trois mois, ou des deux à la fois, à la discrétion du tribunal qui prononce la condamnation. S. R. 1941, c. 297, a. 17.

Secrecy.

17. Any telegraph operator, or any person employed by a telegraph company, divulging the contents of a private despatch, shall be liable to a fine of not more than one hundred dollars, or to imprisonment for a term of not more than three months, or both, in the discretion of the court before which the conviction is had. R. S. 1941, c. 297, s. 17.

SECTION III

DE LA PRISE DE POSSESSION DE LA LIGNE PAR SA MAJESTÉ

DIVISION III

TAKING POSSESSION OF THE LINE BY HER MAJESTY

Prise de possession.

18. Sa Majesté peut, en tout temps, prendre possession de toute ligne de télégraphe et de tous les accessoires pour la faire fonctionner, et en retenir la possession pendant quelque temps que ce soit; elle peut, pendant ce temps, exiger le service exclusif des télégraphistes et autres personnes employées à faire fonctionner la ligne; et la compagnie doit en abandonner la possession.

Taking possession.

18. Her Majesty may, at any time, take, and, for any length of time, retain possession of any such telegraph line and of all things necessary to the sufficient working thereof, and may for the same time require the exclusive service of the operators and other persons employed in working such line; and the company shall give up possession thereof.

Devoir des télégraphistes, etc.

Sous une pénalité n'excédant pas cent dollars, pour chaque cas de refus ou de négligence à se conformer aux exigences du présent article,—laquelle amende est recouvrable par la couronne pour les fins publiques de la province, avec les frais, en la même manière que des dettes pour un même montant sont recouvrables par la couronne,—les télégraphistes et autres personnes ainsi employées doivent, pendant le temps que dure cette possession, obéir avec diligence et fidélité aux ordres, et transmettre et recevoir les dépêches qu'ils sont requis de recevoir et transmettre par tout officier dûment autorisé du gouvernement de la province. S. R. 1941, c. 297, a. 18

Duty of operators, etc.

Under a penalty of not more than one hundred dollars for any refusal or neglect to comply with the requirements of this section, to be recovered by the Crown for the public uses of the Province, with costs, in any way in which debts of like amount are recoverable by the Crown, the operators and other persons so employed, shall, during the time of such possession, diligently and faithfully obey such orders, and forward and receive such despatches, as they may be required to receive and forward by any duly authorized officer of the Provincial Government. R. S. 1941, c. 297, s. 18.

Propriété de la couronne.

19. Sa Majesté peut, en tout temps après l'établissement d'une ligne de télégraphe en vertu de la présente loi, et après deux mois d'avis donné à la compagnie, en prendre possession, et après telle prise de possession, la ligne et toutes les propriétés mobilières et immobilières essentielles au fonctionnement du télégraphe, et tous les droits et privilèges de la compagnie à l'égard de cette ligne, sont dévolus à la couronne. S. R. 1941, c. 297, a. 19.

Crown ownership.

19. Her Majesty may, at any time after the commencement of a telegraph line under this act, and after two months' notice to the company, take possession thereof and, upon such taking of possession, such line and all the property, real or personal, essential to the working thereof, and all the rights and privileges of the company as regards such line, shall be vested in the Crown. R. S. 1941, c. 297, s. 19.

Expropriation.

20. S'il surgit quelque différend entre la compagnie et ceux qui agissent pour la couronne, quant à la compensation à payer à la compagnie pour une ligne de télégraphe et ses dépendances, prises en vertu de l'article 19, ou pour l'usage temporaire exclusif de cette ligne, en vertu de l'article 18, ce différend est réglé par des procédures d'expropriation. S. R. 1941, c. 297, a. 20.

Expropriation.

20. If any difference arise between the company and those who act for the Crown, as to the compensation which ought to be paid to the company, for any telegraph line and appurtenances taken under section 19, or for the temporary exclusive use thereof under section 18, such difference shall be settled by expropriation proceedings. R. S. 1941, c. 297, s. 20.

SECTION IV

DES SOUSCRIPTIONS PAR LES MUNICIPALITÉS OU LES CORPORATIONS

Souscriptions municipales, etc.

21. Toute corporation municipale ou autre peut souscrire et posséder des actions dans toute compagnie formée en vertu de la présente loi, payer le montant de cette souscription à même les fonds municipaux ou autres fonds non spécialement appropriés à un autre objet, et telle corporation municipale peut prélever, au moyen d'une cotisation, l'argent nécessaire pour payer la souscription.

Droits.

Cette corporation possède tels droits comme membre de la compagnie, et vote à raison des actions possédées par elle, de la manière et par l'intervention des personnes ou officiers indiqués par les règlements de la compagnie. S. R. 1941, c. 297, a. 21.

DIVISION IV

SUBSCRIPTIONS BY MUNICIPALITIES AND CORPORATIONS

Subscriptions by municipalities, etc.

21. Any municipal or other corporation may subscribe for and hold stock in any company formed under this act, and may pay the amount of such subscription out of any municipal or other funds not specially appropriated to any other purpose, and such municipal corporation may levy money by assessment, for paying any such subscription.

Rights.

Such corporation shall have such rights as a member of the company, and shall vote upon the stock held by it in such manner and through such person or officer, as shall be determined by the by-laws of the company. R. S. 1941, c. 297, s. 21.

DEUXIÈME PARTIE

DES COMPAGNIES DE TÉLÉPHONE

Dispositions applicables.

22. La première partie s'applique également aux compagnies de téléphone. S. R. 1941, c. 298, a. 2.

Secret des employés, etc.

23. Tout opérateur, ou toute autre personne employée par une compagnie de téléphone qui écoute une conversation ou un message se faisant au moyen d'un appareil de cette compagnie, ou en prend connaissance, et qui, sauf dans le cas où elle est légalement autorisée ou engagée à le faire, divulgue la teneur ou substance de cette conversation ou de ce message,

Peine.

est passible d'une amende de cent dollars, recouvrable sur poursuite intentée devant le tribunal compétent, par toute personne poursuivant en son nom, ou, à défaut de paiement de cette amende, d'un empri-

PART II

TELEPHONE COMPANIES

Provisions to apply.

22. Part I shall also apply to telephone companies. R. S. 1941, c. 298, s. 2.

Secrecy by employees, etc.

23. Every operator or other person in the employ of a telephone company, who listens to or acquires knowledge of any conversation or message that is being carried on by means of the apparatus of such company, and who, except when lawfully authorized or directed so to do, divulges the purport or substance of such conversation or message, shall be liable to

Penalty.

a penalty of one hundred dollars recoverable by suit in a court of competent jurisdiction by any person suing therefor in his own name, or, in default of payment of such penalty, to imprisonment for a

sonnement pendant une période de temps n'excédant pas trois mois, ou des deux à la fois, à la discrétion du tribunal devant lequel le délinquant est trouvé coupable. S. R. 1941, c. 298, a. 3.

term of not more than three months, or both, in the discretion of the court before which the conviction is had. R. S. 1941, c. 298, s. 3.

Message écouté, etc.

24. Toute personne qui écoute une conversation ou un message passant sur les lignes d'une compagnie de téléphone, non adressé ni destiné à cette personne, ou en prend connaissance, et divulgue cette conversation ou ce message, ou en divulgue la teneur ou la substance, sauf dans le cas où elle est légalement autorisée ou engagée à le faire, est passible de la même amende et du même emprisonnement que ceux imposés par l'article 23. S. R. 1941, c. 298, a. 4.

Message overheard, etc.

24. Every person who listens to or acquires knowledge of any conversation or message passing over the lines of a telephone system, not addressed to or intended for such person, and divulges the same or the purport or substance thereof, except when lawfully authorized or directed so to do, shall be liable to the same penalty and imprisonment as are enacted in section 23. R. S. 1941, c. 298, s. 4.

Compagnies formées avant 1934.

25. Toute association ou compagnie de téléphone, organisée le ou avant le 7 mars 1934, et en opération à cette date continue son existence nonobstant la date fixée dans le certificat déposé au bureau du secrétaire de la province, comme étant celle à laquelle cette association ou compagnie de téléphone devait cesser d'exister.

Liquidation.

Une telle association ou compagnie de téléphone ainsi continuée cesse d'exister lorsque la majorité des associés décide, à une assemblée régulièrement convoquée à cette fin, de liquider les affaires de l'association ou compagnie. S. R. 1941, c. 298, a. 5.

Companies created before 1934.

25. Any telephone association or company organized on or before the 7th of March 1934 and operating at such date shall continue to exist notwithstanding the date fixed in the memorandum filed in the office of the Provincial Secretary, as being that on which such association or company shall cease to exist.

Winding up.

Any such telephone association or company so continued shall cease to exist when the majority of the partners decide, at a meeting regularly called for such purpose, to wind-up the business of the association or company. R. S. 1941, c. 298, s. 5.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA

- against -

FILED IN CLERK'S OFFICE U.S. DISTRICT COURT E.D.N.Y. JAN 6 1975 TIME A.M. P.M.

BILL OF PARTICULARS

No. 73-CR-898

FRANK COTRONI
FRANK DASTI and
PAUL ODDO,

Defendants.

- - - - - - - - - - - - - - - - - - X

The United States of America as and for its Bill of Particulars alleges (the numbers below correspond to defendants' requests):

1. The defendants Cotroni and Dasti became parties to the alleged conspiracy during approximately December 1970.

2. The following were co-conspirators with the above-named defendants:

Guido Orsini
Claudio Martinez
Jorge Asaf Bala
Santo Mendolia
Anthony Vanacore
Vincent Altamura
George Stewart
Elvin Lee Bynum
Joseph Cordovano
Giuseppe Catania
Abraham Wright
Jane Doe, a/k/a "Jeannie"
Joseph Horvath
Carlo Arena
Lucien Madere
Claude Faber
Lele Carloni
Nick DiFruscia

4. The Government expects to prove one conspiracy of the "chain" variety.

4(a). The Government will offer evidence with respect to overt acts other than those alleged in the indictment.

4(b). One Pasquale DiPilla was present during the fifth overt act alleged in the indictment. The identities of persons present during the events described in other overt acts in the indictment are presently unknown.

4(c). Conversations took place at the meetings described in the overt acts alleged in the indictment.

I. On or about January 10, 1971, the nine (9) kilograms of cocaine were transported in the Eastern District by Giuseppe Catania and Claudio Martinez. It is claimed that Catania and

(3)

Martinez were aided and abetted by Frank Cotroni, Frank Dasti, Guido Orsini, Paul Oddo, Jorge Asaf Bala and others.

Yours etc.,

DAVID G. TRAGER
United States Attorney
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

By: Thomas P. Puccio
THOMAS P. PUCCIO
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TO:

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA :

-versus- :

FRANK COTRONI, :

Defendant. :

----------x

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
OCT 31 1974 ★
TIME A.M.
P.M.

73-CR-898

United States Courthouse
Brooklyn, New York

October 23, 1974
4:30 o'clock p.m.

B e f o r e :

HONORABLE JACOB MISHLER, U.S.D.J.

EMANUEL KARR
OFFICIAL COURT REPORTER

I hereby certify that the foregoing is a true and accurate transcript from my stenographic notes in this proceeding.

Official Court Reporter
U.S. District Court

(87)

A 290

Appearances:

DAVID G. TRAGER, ESQ.,
United States Attorney for the
Eastern District of New York

BY: THOMAS P. PUCCIO, ESQ.,
Assistant United States Attorney

MRS. JOELLE MC CALL,
Interpreter

- - - -

THE CLERK: For arraignment on a bench warrant, Frank Cotroni.

MR. PUCCIO: Good afternoon, your Honor.

THE COURT: Good afternoon, Mr. Puccio.

You are the interpreter?

MRS. MC CALL: Yes.

THE COURT: Whom do I have before me?

THE INTERPRETER: Pardon me?

THE COURT: Whom do I have before me, what is your name?

(All questions asked of the defendant, Cotroni, and all answers given were through the interpreter, Mrs. Joelle McCall.)

THE DEFENDANT: Frank Cotroni.

MR. PUCCIO: This is 73-CR-898, your Honor.

THE COURT: Frank Cotroni, you are charged in indictment 73-CR-898, together with Frank Dasti, Guibo Orsini, Paul Oddo, Jorge Asaf Ybala and Claude Martinez, with two counts involving narcotics, narcotic offenses.

Now, do you have a lawyer?

THE DEFENDANT: Right now, no.

THE COURT: Do you have the funds to hire lawyer?

THE DEFENDANT: I have to call Montreal and my attorney over there to take care of it.

THE COURT: You will require a lawyer admitted to practice in this Court, you know that.

THE DEFENDANT: Yes, I am aware of that.

THE COURT: But there is no question about your ability to pay for a lawyer, is there?

THE DEFENDANT: It will depend.

I will call Montreal and he will take care of that.

THE COURT: Now, you are able to pay for a lawyer, that is what I want to know --

THE DEFENDANT: Yes.

THE COURT: (continuing) Because under our statutes if you are unable to pay for a lawyer, the Court will appoint one at no expense to you.

You understand that?

THE DEFENDANT: But I don't know what the charges are for lawyers here.

THE COURT: I am required to advise you as to these rights.

THE DEFENDANT: Yes.

THE COURT: Now, you have the constitutional right to remain silent, you don't have to talk to anyone.

THE DEFENDANT: I will remain silent.

THE COURT: I think that it would be foolish

of you to talk to anyone without the advice of a lawyer.

THE DEFENDANT: I will wait for my attorney's counsel.

THE COURT: Of course, if you decide to answer questions and talk to anyone, any Government agent, you could without the aid of a lawyer and you could at any time stop the questioning and insist on the presence of a lawyer.

Do you understand all of that?

THE DEFENDANT: Yes.

THE COURT: Has a copy of the indictment been turned over to the defendant?

MR. PUCCIO: A copy of the indictment hasn't been turned over here, your Honor, but the indictment was forwarded to Canada and was translated and used in connection with the extradition proceedings and supporting affidavits reflecting the evidence against the defendant were also admitted at the extradition procedure.

There have been lengthy and protracted proceedings in Canada in this case.

We will give the defendant a copy of the indictment in english, if he likes.

THE COURT: I would appreciate your giving the

defendant a copy of the indictment.

(A document was then handed to the defendant.)

THE COURT: Will you see that -- well, will you translate it for him?

It can be done now or later, I don't care at which time it is done.

MR. PUCCIO: Does your Honor wish to set bail at this time?

THE COURT: No.

First I want to know whether you will call your lawyer today, immediately.

THE DEFENDANT: Yes.

THE COURT: How much time do you want to get counsel, to employ counsel?

THE INTERPRETER: Pardon me?

THE COURT: How much time do you want to employ counsel?

THE DEFENDANT: Well, I believe that from tomorrow or the next day that could be done.

THE COURT: All right.

THE DEFENDANT: This is an issue I have to talk to my attorney in Montreal to know exactly.

THE COURT: Well, you tell your lawyer in Montreal that this is an old case, we have been waiting for you to enter the United States so we can set it

down for trial.

MR. PUCCIO: Your Honor, at our last appearance I believe you did set a trial date.

THE COURT: In November.

MR. PUCCIO: And in anticipation of Mr. Cotroni being extradited.

THE COURT: Then I will give you that information.

MR. PUCCIO: I believe it was in November.

THE COURT: It is on for November 18th for trial, that is almost a month.

THE DEFENDANT: Next November?

THE COURT: This November, yes, and we intend to go to trial on that day so it is very important that you call your lawyer immediately and tell him to help you retain whatever counsel he feels will be helpful to you to try this case, and not to waste any time at all.

I will put this case down for a plea for Friday, November 1st.

Well, suppose I make it Thursday, do you think you can get him into court at 9:30?

MR. PUCCIO: Yes, we can.

THE COURT: Thursday, October 31st at 9:30.

By that time I expect your lawyer to be here

and I will take a plea at that time.

Now, how about bail?

MR. PUCCIO: Well, as your Honor is aware, there are two counts in the indictment which charge violations of the narcotic laws. The possible, the maximum possible sentence in this case is forty years.

As indicated by the papers submitted in connection with the extradition matter, the Government has, I would submit, a strong case.

There is a co-conspirator who is going to testify, there were surveillances by various Government agencies in the United States and Canada, there were wiretaps made in connection with this case.

The defendant is forty-four years of age, he is not a citizen of the United States, he has no roots whatsoever in this country, he was born and raised in Canada.

During November of 1973 he was arrested provisionally at our request and he has been incarcerated without bail in Canada ever since November 1973 awaiting extradition.

Between November of '73 and now, he has had an extradition hearing and numerous appeals. Today the Supreme Court of Canada finally denied his last appeal in this matter and he was order extradited.

I'm sure your Honor is well aware of the frequency of bail-jumping in narcotic cases and the fact that if defendants go to certain countries, especially in South America, it is practically impossible to bring him to the United States for trial.

The defendant has had numerous arrests, he is reputed to be an organized crime figure in Canada.

I would make the statement for the record now that the Government is ready to go to trial on November 18th.

In light of all of the factors, I would ask the Court to set bail in the amount of one million, five hundred thousand dollars.

THE COURT: Bail is set in the amount of one million, five hundred thousand, surety company bond or cash.

MR. PUCCIO: I would also ask for an opportunity, your Honor, if someone attempts to post bail in this case, that the Government be given opportunity to have a hearing concerning the sources of the collateral and also to review the bail at that time.

THE COURT: All right.

It is directed that if bail is posted that a bail hearing be held to determine the identity of the individuals posting the bail and the source of the

funds.

MR. PUCCIO: Thank you, your Honor.

Good afternoon, your Honor.

THE COURT: Good afternoon, that is it.

Marshal, I would like you to leave word that it is very important to keep this man in communication with his Montreal lawyer so he can get counsel.

I don't want this case delayed because he hasn't been able to communicate with his lawyer.

THE MARSHAL: If he makes request, I will make sure that counsel in Montreal knows about it.

THE COURT: Would you do that?

We have lost the interpreter, haven't we?

THE MARSHAL: He understands a little.

(The interpreter then reappeared before the bench.)

THE COURT: If you can get your lawyer while you are on the telephone, would you give the name and telephone number to Special Agent --

THE MARSHAL: Tobin.

THE COURT: And he will try to get your lawyer.

Just inform him that you are in custody and you want to get in touch with your lawyer and tell the lawyer how to make sure he can communicate with you. The warden of the institution knows that he is to

permit him to get in touch with your lawyer.

THE DEFENDANT: Thank you.

THE INTERPRETER: Yes.

THE COURT: Thank you.

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EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

-against- :

FRANK COTRONI, :

Defendant. :

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73-CR-898

United States Courthouse
Brooklyn, New York

October 31, 1974
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B e f o r e :

HONORABLE JACOB MISHLER, Chief U.S.D.J.

HENRI LEGENDRE
ACTING OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: THOMAS PUCCIO, ESQ.
Assistant U.S. Attorney

MOSES POLAKOFF, ESQ.
Attorney for Defendant

Also present:

GERALD ROSENTHAL, ESQ.
Attorney for Oddo

THE CLERK: U.S.A. v. Frank Cotroni.

THE COURT: The first order of business is a telegram that I received, I think intended for the defendant, so I'll turn it over. For the record, I won't say anything.

(Court hands telegram to Mr. Polakoff.)

THE COURT: Have you gone over the indictment with the defendant?

MR. POLAKOFF: Yes, your Honor, I have.

THE COURT: You waive the reading?

MR. POLAKOFF: Yes.

THE COURT: How does the defendant, Frank Cotroni plead?

MR. POLAKOFF: Not guilty.

THE COURT: You called me, Mr. Polakoff, and I advised you that this case was on for trial for November 18, and I expect to go to trial on that day.

MR. POLAKOFF: The first question is the question of bail. I'm informed that your Honor fixed bail at $1,500,000?

THE COURT: Right.

MR. POLAKOFF: I ask your Honor to fix a reasonable bail, one that would not be punishment for the defendant. It would only assure his presence here,

that is the only purpose of bail. This defendant is married, has a home. He lives in Montreal and has six children, ages 19, 18, 16, 14, 12 and 9. He's never run away, he was convicted in 1960 and received a three-month sentence. I believe a reasonable bail is required in this case. I suggest a bail which would be fair of $50,000 with the right to put up whatever percentage in cash your Honor designates; the bail will be furnished by his sister.

THE COURT: You mean he doesn't have the bail money?

MR. POLAKOFF: She will furnish it for him.

THE COURT: How much was the cost of the litigation in Canada?

MR. POLAKOFF: I haven't the slighest idea.

THE COURT: He went to the highest court in Canada.

MR. POLAKOFF: I know the attorneys and I don't know the fees that Canadians charge.

THE COURT: I thought only the wealthy and very poor could afford to go to the highest court of Canada.

MR. POLAKOFF: Not necessarily, your Honor. Middle-class people have the same rights.

THE COURT: The same rights, theoretical rights; middle-class people in this country go to the highest

court of our land require assistance, they usually say I can't afford it.

MR. POLAKOFF: Well, they have assistance. That's the first order of business, your Honor.

THE COURT: What do you say about that, Mr. Puccio?

MR. PUCCIO: As I pointed out at the arraignment, Mr. Cotroni was arrested in December of 1973 in accordance with the provisional request we made. He's a Canadian citizen, he was born and raised in Canada and lived there his entire life, and the Canadian court did not see fit to let him out on bail for an entire year. There was numerous bail applications.

MR. POLAKOFF: He does not understand English too well.

THE COURT: Don't we have an interpreter? I thought you spoke with me in English.

THE DEFENDANT: Some words.

THE COURT: You know what a bail application is?

THE DEFENDANT: Yes.

MR. POLAKOFF: He said he made no application for bail.

MR. PUCCIO: Your Honor, I could get the record.

MR. POLAKOFF: There are other defendants in this case. I've recommended a bail which I believe is very reasonable. He's not a man who is running away.

He has family ties. He was born in Canada, he lived there all his life. He has a substantial family --

THE COURT: Mr. Polakoff, about six months ago on just a dealer that I thought was probably middle-level in the operation, Mr. Pantova came in and asked me to fix bail at $150,000, his brother who was a doctor in Puerto Rico to be the surety, and put up his house and his practice in Puerto Rico, and he was released on bail. The very next time he was to appear in court the lawyer came in and said, "Judge, I could tell you that he's taken flight." That's not an isolated case. The highest incidence of fugitive experience that we have had is by far on narcotic charges.

Now, the Government says, the Government represented to me when I fixed bail that they have proof that this was one of the biggest operators, not only in Canada, but in the world; is that right?

MR. PUCCIO: We have evidence.

MR. POLAKOFF: If your Honor please, I've been an Assistant U.S. Attorney way back in 1921, and in 1925 I was Chief of the Criminal Division when I got out. I am practicing in this court over fifty years, fifty-four years to be exact. You don't punish one defendant because of the malfeasance of another person.

I asked Mr. Puccio why he was put in Hempstead. He said because there was a jail break in the House of Detention in New York; because there is one jail break and now we know why, in twenty years, you don't punish other defendants.

THE COURT: You are too good a lawyer to rest on that argument, and if you know anything about West St. it's an old garage, never built as a prison.

MR. POLAKOFF: I've been there dozens of times.

THE COURT: More than I have, and I would say the security provisions there are much less than those in other jails, and I think all Mr. Puccio is saying that proves that security is less effective in West St. than it is in Hempstead, but that's another question. We'll talk about him being in Hempstead later. We'll see what we could do about that.

MR. POLAKOFF: When I was an Assistant, if a case came in with two kilos it was the biggest case in history and ever since, every case I've read about in the newspapers that -- I haven't defended a narcotic case in fifteen years, the laws have changed -- it's the biggest case. It's a French connection, Mexican connection, South American connection, and now this is a Canadian connection. If he was as bad as the Government pictures him, I'm sure the Canadian

authorities who are very efficient would have had this man behind bars. The amount involved is very small, why they would say they have information that he's the largest, among the largest narcotic dealers, that's insulting the Canadian authorities. I still suggest, your Honor, that a $50,000 bail under these circumstances is very reasonable. I understand that Dasti, another defendant, was under bail, he didn't run away. He was permitted to leave this jurisdiction, go to Canada, come back. I think that's the only fair thing to do at this time.

THE COURT: Mr. Puccio?

MR. PUCCIO: I would object to any reduction in bail. I don't know if it's relevant, but the Canadian authorities indicate that Mr. Cotroni is a major narcotic dealer and one of the biggest racketeers in Canada. I don't think they are embarrassed, they have been trying to develop evidence against him for a great many years without a good deal of success. It's taken the United States Government a year to bring him here for trial, it's cost the Government quite a bit of money and time. He has no roots in this community. Ina related manner involving a group of narcotic traffickers, a defendant named Settimo was never available at the time of trial, had fled the United

States and went to Italy and can't be located. Your Honor is aware where other defendants fled to Argentina and other countries.

THE COURT: Carmina at one time forfeited $100,000 bail but then was extradited.

MR. PUCCIO: He was arrested in Bolivia and was sent to the United States.

THE COURT: How heavy is the Government's case?

MR. POLAKOFF: Depends upon the words of another narcotic defendant, and we have good proof and we believe that we have a good case.

THE COURT: Maybe the Government ought to present its case.

MR. PUCCIO: There was a long extradition hearing in Canada, I understand quite a bit of the evidence had to be disclosed up in the Canadian court, and just based upon what was disclosed there it's clear that the Government has a very strong case here. The testimony of a co-conspirator by the name of Catania who was involved in this transaction from beginning to end; in addition to that, there was a surveillance conducted by the Royal Canadian Mounted Police and the Drug Enforcement Administration, both in Mexico and in Canada and in New York which placed the individuals involved, the places they were supposed to be in,

according to the testimony of Catania given before the Grand Jury. In addition to that, since the indictment, the Canadian Government has seen fit to give us wiretap transactions, tape recordings that were made at the time of this investigation which we will offer into evidence at the trial. Mr. Cotroni's voice is recorded on these wiretaps and it's further evidence of --

THE COURT: What does the wiretap show?

MR. PUCCIO: There was a wiretap transaction December 7th and January 7th --

THE COURT: How large?

MR. PUCCIO: Nine kilograms of cocaine. Those wiretaps relate to this particular transaction. There are other wiretaps. There is other information which indicates that this defendant was a substantial dealer for a long period of time.

MR. POLAKOFF: In the case of the other defendants, they have the roots that this defendant has, six children, aged from 19 to 9.

(continued next page)

THE COURT: Of course, routes in other countries, I would consider routes in Argentina or Columbia a lot more fragile than routes in Canada, with that I agree; but he doesn't have the routes here, how do we bring him back, another proceeding for a year if he stays in Canada.

MR. POLAKOFF: If your Honor please, the assistant is attempting to punish this defendant because he exercised a constitutional right, an extradiction hearing.

MR. PUCCIO: I am not going to do that.

THE COURT: I think it's an indication of his unwillingness to face trial here. There are two interpretations.

MR. POLAKOFF: Any person who can avoid a trial-- and if these conversations as alleged, took place in Canada, there is no reason for -- why Canada hasn't got jurisdiction.

THE COURT: I can't pass on the efficiency or the motive or reason for Canada not prosecuting. The Government here has the indictment, returned by a Grand Jury.

Now, we have some proof, the Government says they were negotiating a 9 kilo deal, that is not a

small transaction.

MR. POLAKOFF: But it's not a large transaction.

THE COURT: We have had larger. I have been in court with 100 kilos of heroin on that counsel table. (Pointing.)

MR. POLAKOFF: In this case there is no heroin.

THE COURT: What is the drug?

MR. PUCCIO: Cocaine.

MR. POLAKOFF: I understand from what I picked up only today, that this witness Catania in this Court has been proven to be a liar of perjury.

MR. PUCCIO: That's somewhat of an exaggeration.

THE COURT: Cross examination --

MR. POLAKOFF: There is no cross examination in an extradiction proceeding.

THE COURT: In this court Catania's testimony -- was the defendant convicted?

MR. PUCCIO: They weren't convicted; Tramanto and --

THE COURT: Does that prove that he was a liar?

MR. POLAKOFF: The proof in that case, apparently that he misstated certain facts which apparently the attorneys were able to prove. The

jury didn't believe him.

THE COURT: I charged them you must be very careful in accomplice testimony.

MR. POLAKOFF: The jury did not believe him.

THE COURT: I hope if Catania takes the stand that you won't ask him if he testified in the other trial where there was a defendant's verdict.

MR. POLAKOFF: I could cross examine him on what was developed.

THE COURT: On what he said.

MR. POLAKOFF: Of course. Anymore than the Government can ever say that a defendant was convicted on Catania's testimony, I realize that. I've practiced long enough.

THE COURT: Mr. Polakoff, I think that this defendant presents a real risk. I think that the length of time that it took to bring him here under extradiction proceedings that were brought to the attention of the highest court of Canada, and I think that it was argued twice; one, they had made an interpretation, then there was a reargument --

MR. PUCCIO: There were several collateral proceedings.

THE COURT: Many proceedings, to resist

coming here. I will understand the defendant's right to resist extradiction but it also shows his unwillingness to come here to face this charge.

I think the answer to all this is a quick trail. It's already been set down for November 18.

MR. POLAKOFF: I could not under any circumstances be ready by November 18; Today is October 31.

THE COURT: In fairness to me you will agree that we spoke about this case.

MR. POLAKOFF: I spoke to you on - -

THE COURT: The day he was arraigned.

MR. POLAKOFF: The day after he was arraigned. I called the Clerk of the Court at 4 O'clock.

THE COURT: The day after.

MR. POLAKOFF: On Thursday and asked to be present, and the Clerk told me, Oh, don't worry about, it takes a day or two before he's arraigned. The next thing I knew he was arraigned and I learned it from the newspapers with a big story about Canadian Connection. It would be impossible, your Honor, and I tell you right now I need at least two months.

If I don't get it from your Honor, I shall have to apply to the Court of Appeals for relief both on bail and for the adjournment.

THE COURT: You could go to the Court of Appeals on bail because the motion to reduce is denied, but you had better make a record for the reason that you need two months and I'll fight you to United States against Maxey, where I warned the defendant to be ready in three weeks and he waited until the Firday before the date fixed for trial, and the attorney came in said, well Judge, I was just retained and I would like some time, and I said, nothing doing, start Monday.

Mr. Polakoff, I want you to understand the temper and the mood and tempo of the Court in insisting that defendants go to trial and it's no answer that a defendant is willing to waive his rights under the rules for prompt disposition and that afterall there wasn't any prejudice.

The Court has said that the public is prejudice and the earlier the better, and the Irving Bill, that's just been passed, requires a trial of someone in custody within a month.

To use that's impossible -- but it will just show you the mood of not only the bar, the courts, the prosecutors, but the Congress.

MR. PUCCIO: Can I add something that I think

is relevant? It's been our point throughout this entire extradiction proceeding in Canada, that an attempt would be made to influence the chief Government witness against Cotroni and this concern was based upon information that we had received on a regular basis from the Royal Canadian Mounted Police.

At one point, in addition to that information, Catania's sister and brother-in-law were in Canada and were approached by members of the Cotroni family and they they asked them to go to the United States to speak to Catania and talk to him about not testifying in this case.

We would object. The only reason for the objection is to wage some sort of psychological warfare on the main Government witness and put pressure on him.

The facts supporting the indictment were made known to the defendant in 1973 at the extradition hearing; if counsel examines the affadivit which we filed in connection with that hearing he'll see the entire case laid out.

In addition to the affidavit there was testimony by members of the Royal Canadian Mounted Police and other agencies up there at the hearing,

so the facts of the case has been well known for well over a year.

THE COURT: Are you ready to supply Mr. Polakoff with all the pretrial material?

MR. PUCCIO: I'm ready to provide him with anything.

THE COURT: Will you give him that today if he comes to your office?

MR. PUCCIO: I don't have the wire tap transcript but I'll have that by the end of the week.

THE COURT: Today is Thursday, tomorrow is Friday.

MR. PUCCIO: I'll try and have them by tomorrow or early next week.

MR. POLAKOFF: If your Honor please, I accept everything that the prosecutor says as gospel. I'll need witnesses or depositions in Mexico, I'll need possibly witnesses in Italy.

I am new in this case.

THE COURT: Are you ready to name them?

MR. POLAKOFF: Not yet, I haven't had an opportunity to confer with my client properly.

THE COURT: Have you conferred with the Canadian counselor?

MR. PUCCIO: It is my understanding there was more than one attorney up in Canada representing Mr. Cotroni, four or five attorneys.

THE COURT: I will say this, I don't think you are prepared to tell me how long it will take. Why do you say two months, maybe you need six months.

MR. POLAKOFF: Because I believe two months is reasonable. I may come up with it, but the Canadian proceeding was by affidavit, there was no cross examination.

A lot of the things that were said have to be checked. It involves Mexico, it involves Canada; it possibly involves Italy. We want to find out. I want to investigate whether we need these people, whether they will be helpful.

Now, I realize that the Government is always trying cases in a hurry.

THE COURT: No, that is not true.

MR. POLAKOFF: In this particular case, in any event they feel they will have the defendant and his counsel at a disadvantage. I'm informed besides, your Honor, just now that Oddo is very very sick.

THE COURT: We will get a statement from Mr.

Rosenthal as to that. I imagine now is a good time.

MR. ROSENTHAL: My name is Gerald Rosenthal 250 West 57 Street, appearing for Max Fruchtman of the same address.

Mr. Fruchtman was informed that Mr. Oddo will not go to trial because of illness. He has a coronary artery condition. I believe it's his left ventricle is 90 percent closed and an unstable --

THE COURT: When will he be able to go to trial?

MR. ROSENTHAL: The doctor was unable to tell us -- probably will need some openheart surgery.

THE COURT: How does that help the defendant Cotroni in asking for an adjournment? I'll not adjourn this case until Mr. Oddo is ready to go to trial.

It may be five months, six months.

MR. POLAKOFF: That's all right.

MR. PUCCIO: If it appears to be a long time we'll consent to a severance.

THE COURT: That will be the answer.

MR. POLAKOFF: I still request a reasonable adjournment.

THE COURT: Based on the record, Mr. Polakoff, the motion is denied. If you want to come in in a week or so at that time to familiarize yourself after you have had further discussions with Counsel in Montreal, and that's in the plural, and you then learn why you need more time, and it will have to be very specific.

This witness is unavailable. He refuses to come to court and in a general way, general statement as to what the man will testify to.

MR. POLAKOFF: I don't have to tell that to the prosecutor, your Honor.

THE COURT: I don't know how much you have to disclose it but I leave that to your discretion, but you have to disclose enough so that he could argue against an adjournment if he wants to. I will not adjourn this case except for a clear showing that it's necessary for the full and fair and proper preparation.

I might say this, Mr. Polakoff, I'm assuming that this defendant has extensive means, that he's not a poor man. I don't know what middle class is but I don't believe from what I hear that his sister was going to put up the $5,000, if it was, it was just front money; anybody that can afford to go on

his own money up to highest court doesn't need his sister's.

(Cont'd on next page.)

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MR. POLAKOFF: We don't know whether he had assistance there or not, you are assuming that, your Honor.

THE COURT: you tell me.

MR. POLAKOFF: I don't know at this time.

THE COURT: How much does it cost for him to go through -- I understand he had five counsel in Montreal and they must get what we get here, and you know what that is.

MR. POLAKOFF: I don't know.

THE COURT: At any rate, I could tell you this--

MR. POLAKOFF: Your Honor --

THE COURT: Let me finish my thought. That I won't take as an excuse that you personally have to see every one of fifty witnesses that this defendant names because you and I know that on the face of it it's nonsense. This is not a poor man and more than that, if you show me he's a poor man the C.J.A. will come to your rescue, and I'll see to it that you get the necessary funds.

MR. POLAKOFF: I didn't say he was a poor man.

THE COURT: If a man has to raise only $5,000 and he has to get it through his sister he's a poor man.

MR. POLAKOFF: I didn't suggest $5,000, your

Honor.

THE COURT: 50,000?

MR. POLAKOFF: I suggested 50,000 in cash.

THE COURT: You suggested a $50,000 bond and the amount of cash?

MR. POLAKOFF: Left to your Honor's discretion.

THE COURT: It can't be any more than ten per cent.

MR. POLAKOFF: So fix $250,000 bail. I'm willing to put up reasonable bail. Your Honor, the purpose of keeping him in jail especially when you're forcing me to trial on the 18th is to prevent proper preparation. I can't prepare this case in jail and your Honor knows this. Your Honor has been a practicing lawyer. I want the minutes where Catania was a witness.

MR. PUCCIO: We'll make a copy.

THE COURT: There you are. If you spend some time with Mr. Puccio today -- you know what to do. I think Mr. Puccio will give you --

MR. POLAKOFF: The other two attorneys have advised me, and I spoke to them, and I had no objection to the adjournment -- from Mineola.

THE COURT: Clark.

MR. POLAKOFF: They told me that they had been in touch with Mr. Puccio for this information for weeks.

and months, and he hasn't given it to them, and I'm quoting them.

THE COURT: Those hearsay statements are unfair and tell me how persistent they were.

MR. ROSENTHAL: Your Honor, we have been trying to get the wiretap information that Mr. Puccio has spoken of. Mr. Fruchtman first spoke to me about it.

THE COURT: Who is Mr. Fruchtman?

MR. ROSENTHAL: He is the attorney of record.

THE COURT: And you represented Oddo and Mr. Clark represented Basti. Is there anybody else in this proceeding?

MR. PUCCIO: Those are the three attorneys; Mr. Fruchtman and Mr. Clark.

THE COURT: Where are the other defendants?

MR. PUCCIO: Claudio Martinez --

THE COURT: He's where?

MR. PUCCIO: He's in Mexico; and Orsini was convicted in Canada during the pendency.

THE COURT: You heard the explanation on the failure to give the tapes at this point.

MR. PUCCIO: As a practical matter I offered the transcriptsto Mr. Clark long before I had them ready and long before Mr. Cotroni was down here.

THE COURT: You have the transcripts?

MR. PUCCIO: I'm preparing transcripts. They could listen to the actual tape. It would take a half-hour.

THE COURT: Listen to this. You could listen to the tapes. Now, it takes about a half-hour and the transcript is ready.

MR. PUCCIO: I have a rough draft of the transcript here in three different languages; the French in a couple of conversations is not Parisian French, sort of a Canadian French and it takes awhile to have it translated and typed up.

THE COURT: While I'm at it, I insist the lawyers get together within the next week or so and agree on a translation, bring your own interpreters down.

MR. PUCCIO: Quite a bit of it is in English.

MR. POLAKOFF: We have to have the tapes examined. Maybe they have been tampered with.

THE COURT: Mr. Polakoff, it isn't necessary to do it in time sequence. The steps can be done concurrently. There is no reason that you can't listen to the tapes and then learn that they were tampered with later.

MR. POLAKOFF: All in two weeks?

THE COURT: The 18th isn't two weeks.

MR. POLAKOFF: Fourteen days is two weeks.

THE COURT: When did you first learn about the tapes?

MR. POLAKOFF: When I spoke to him on the phone, but I wasn't the attorney of record but I've spoken to Mr. Clark and Mr. Fruchtman and asked them if they had the tapes and they said no, they have been trying to get them. Now, how are we going to interpret Canadian French, Italian, all within that short time.

THE COURT: You don't have to be there. You could have your interpreters there and somebody from your office.

MR. PUCCIO: There is only a couple of conversations --

THE COURT: Anything that can be done in eighteen days can be done in a year if you try hard enough, Mr. Polakoff.

MR. POLAKOFF: I have other business, other commitments, other problems. As a matter of fact, moving my office today and if you know what that means it's a considerable job.

THE COURT: Mr. Polakoff, I have a great deal of respect for you and I wish I could comply with all you are asking for. I am saying I can't, and my suggestion is, and I don't like to use the expression,

but so that you get straightened out, you go to the Court of Appeals immediately so you know where you stand.

MR. POLAKOFF: I will.

THE COURT: It will clear the air.

MR. POLAKOFF: May we have the minutes?

THE COURT: I'm sure the Government will take it on short notice.

MR. POLAKOFF: I'll apply ex parte and have the judge set a date without papers.

THE COURT: That's fine.

MR. POLAKOFF: In view of your Honor's ruling, how about the bail?

THE COURT: I denied the bail.

MR. POLAKOFF: You denied bail entirely?

THE COURT: I denied the reduction in bail.

MR. POLAKOFF: Even if I suggested a quarter of a million?

THE COURT: That's right. When you argued before it's inconsistent to keep a man in jail and have a quick trial, I say that those concepts all look to one thing, and they all are consistent with each other. The answer to a high risk defendant is a quick trial.

MR. POLAKOFF: I don't know on what basis.

THE COURT: There is one other problem you had and that's because of inconvenience for the lawyer to

interview the defendant in Hempstead.

MR. PUCCIO: May I make a suggestion?

THE COURT: Where do you live? Would Westchester be easier?

MR. POLAKOFF: I live in Manhattan.

MR. PUCCIO: I indicated this to Mr. Polakoff, we would bring Mr. Cotroni into the building as often as he wanted.

THE COURT: That's an unusual offer. I'm grateful to the U.S. Attorney for making that suggestion. So there is no inconvenience to you.

MR. POLAKOFF: There is an inconvenience.

THE COURT: To come to this court?

MR. POLAKOFF: And to talk to a defendant, where I need other people with me and it's must more inconvenient than talking to him in my office. If your Honor fixes the bail and limits the jurisdiction in New York and have him report to the marshal every day, I'll even go for that.

THE COURT: If I didn't believe that this defendant was a high risk I would go along with it.

MR. POLAKOFF: A man with six children, from 17 to 9 who lived in Canada all his life is going to run where and leave his family, leave his home?

THE COURT: If he has the funds, and he has good

connections on an international scale, the answer is not that he would, the answer is that he probably would, yes.

MR. POLAKOFF: I disagree.

THE COURT: A narcotic charge -- but I say this -- I say this, a quick review by the Court of Appeals will help us all. There is nothing personal, Mr. Polakoff. I just feel -- and I must assume, I'm not saying it's true, I must assume that the Government's representations are true in order to fix bail.

MR. POLAKOFF: What representations are true?

THE COURT: First, he's one of the biggest racketeers in Canada; two, that he's one of the biggest narcotic dealers in Canada.

MR. PUCCIO: That's correct.

THE COURT: Am I correct so far, Mr. Puccio?

MR. PUCCIO: That's correct.

THE COURT: Three, that he's a man of means and can afford to leave Canada, can afford to go to a country like Argentina where it's difficult, or other countries where it's impossible, that's where the cocaine is made; Ecuador, Peru, Bolivia.

MR. POLAKOFF: And he's going to take his six children with him or abandon them? You should add them.

THE COURT: Or abandon them. Abandon is not the

word. I don't know what plans he has and you don't, either. There is a probability that he would go to one of these countries and wait it out until Mr. Catania is not around any more.

MR. POLAKOFF: That's a far-fetched conclusion, your Honor.

THE COURT: We are talking about probabilities.

MR. POLAKOFF: The probability is that he's kept in jail and rushed to a trial to prevent him from getting adequate representation in court. Other people in our district -- and in this district have had reasonable time to prepare a case in a convenient manner. This purpose of high bail is merely to punish him for allegations that are unsubstantiated, that doesn't have one bit of proof.

THE COURT: I reject that, but there is more proof here than in the usual case, but more than that, if I believe that this man was deprived of his constitutional rights of due process or to effective counsel I wouldn't hesitate to adjourn it, but you have not made the showing. There are generalities that you must take depositions of people throughout the world.

MR. POLAKOFF: I didn't say throughout the world.

THE COURT: Italy, Mexico.

MR. PUCCIO: I might point out, Italy is not involved in this particular case.

MR. POLAKOFF: We may have witnesses from Mexico to prove certain situations about Catania.

THE COURT: You may tell me how long it takes and why it takes such a long time.

MR. PUCCIO: If counsel indicates to us that there is an important witness in a foreign country and gives us an idea what he's going to testify to, we'll consent to send someone down there to take a deposition without a court order and do it as soon as possible.

THE COURT: There you are.

MR. POLAKOFF: All within two weeks and three days, with Saturdays and Sundays in between with an attorney coming in new?

THE COURT: No, Mr. Polakoff, all within the time that this defendant knew that there was an indictment pending. Now, it's hard to believe that competent counsel up in Canada didn't start preparing this case when they were aware of the charge. They may have a lot of the answers to a lot of your questions.

MR. POLAKOFF: I understand that counsel was only involved in an extradition proceeding which was done by affidavit and not by witness examination, and

the fact that the court, the fact that the highest court took the case created in my opinion some doubt as to whether the proceedings were viable.

MR. PUCCIO: The highest court took the case to decide whether conspiracy was covered by the extradition treaty and the reason the highest court took the case had nothing to do with the evidence that was presented.

THE COURT: Now, the judgment --

MR. PUCCIO: That was the first judgment.

THE COURT: Of the Province of Quebec. It syas "On November 8, 1973 an information was before Judge Hugson" -- and so forth, and then it outlines the charge.

MR. POLAKOFF: Your Honor, the defendant just advised me, fortunately we have the interpreter here, that his counsel was not involved in preparing a defense. His counsel was only involved in handling the extradition proceeding.

THE COURT: But you can't separate the charge, that's what the extradition was all about, and the real question is how much work Montreal counsel has done, and you tell me you have been in touch with him.

MR. POLAKOFF: I am telling your Honor that they did nothing as far as preparing this case for trial.

THE COURT: I think that what you ought to do when you make out a case, if you wish, as if and when you come back here, either in the Court of Appeals or here, to show why you need the additional time. I'm saying on this record, and I underscore that you made out no case for adjournment.

MR. PUCCIO: I think the record should reflect that Mr. Polakoff was in touch with me as early as September, he just didn't get into this case this week.

THE COURT: I wasn't aware of that.

MR. POLAKOFF: I told you that I had spoken --

THE COURT: When you say "I spoke to Mr. Puccio" I thought you meant last week after you had called me and after you had spoken to me, because I had suggested that.

MR. POLAKOFF: Your Honor, I made unofficial inquiries, I wasn't retained. I received a call and was a personal conversation. I told your Honor I do not repeat and I don't expect the Government to repeat personal conversations.

MR. PUCCIO: I am not going to repeat conversations but Mr. Polakoff has been in the case for two months.

THE COURT: If you didn't do any work on them at least you were aware that you might be retained.

MR. POLAKOFF: I'm not going to do a lot of work on a might basis. I was retained yesterday.

THE COURT: But did you start working yesterday, Mr. Polakoff, when I spoke to you? When I spoke with you on Thursday I said don't wait until the arraignment on Thursday, start talking to Mr. Puccio so that you don't waste that time. Did I substantially say that?

MR. POLAKOFF: Substantially; but your Honor, I told you that the defendant was in Hempstead and I wasn't going to Hempstead, and I offered to appear before your Honor the next morning.

MR. PUCCIO: I brought the defendant in Tuesday.

MR. POLAKOFF: You are jumping the gun, now. When I spoke to you I wanted to appear before you on Tuesday and you said, let it go until Thursday. I said that's all right. Then I spoke to Mr. Puccio and Mr. Puccio brought him in on Tuesday and that's when I was retained. I told Mr. Puccio, and I tell your Honor, no attorney, nobody can retain me except the defendant himself and when I'm retained by the defendant I become his attorney of record, and I filed a notice of appearance this morning but I was retained by him on Tuesday.

THE COURT: So since we are counting days, when you said two weeks and three days, you concede now that you have three weeks to prepare until November 18.

MR. POLAKOFF: I spoke to the defendant generally. I saw him for an hour in jail. I don't like to prepare my cases in jail.

MR. PUCCIO: This was downstairs in our building.

MR. POLAKOFF: Downstairs it was in jail. I like to prepare my cases wherever possible, in my office where I have my books available and where I can have a stenographer available, and where I could talk to him intelligently.

Now, I say again, that the purpose of this high bail, even if your Honor was forcing me to trial on the 18th, is simply for the purpose of --

MR. PUCCIO: We'll make an office available for Mr. Polakoff or a room.

THE COURT: I think that's a proper statement to put on the record that the reason you are being forced on, and I underscore forced, is to deprive you of a right to due process or an effective counsel, and I can answer that by repeating that you have made no showing whatever that that's so, none at all.

MR. POLAKOFF: I have made no showing because I haven't been able to even start preparing the case with my defendant in Hempstead.

THE COURT: How could you make a statement without knowing?

MR. POLAKOFF: I spoke to him casually, briefly on Tuesday, and he told me at that time there are certain witnesses that he would have to call, either from Mexico, if they will come, or from Canada if they will come. I told him if they don't, we'll make other arrangements to take their testimony.

THE COURT: You are a man of longer experience than I, Mr. Polakoff, but I'll say this is not the first time a defendant has asked for an adjournment on the grounds that there are witnesses that he must interview or depose, and that it's going to take a long time to do it and never produce him at the trial.

MR. POLAKOFF: That's possible.

THE COURT: Now, let me say this, and I'll give you some -- we had a case in this court that was adjourned once and the defendant came in and said we want an adjournment, we have to interview some witnesses in Germany, before Judge Bruchhausen. I don't know the name of the case but I thought it was a hard ruling by the Court of Appeals, and Judge Bruchhausen granted the adjournment of something like a month, and the defendants were not satisfied and went to the Court of Appeals, and as I recall the determination, the Court of Appeals said he had enough time, bring him in and try the case, almost

saying bring the defendant by the nape of the neck and get the cas e tried, no more adjournments.

MR. POLAKOFF: You are jumping the gun. I don't know at this moment whether they will testify. I don't know at this moment whether they will testify in a manner that will help us. I have to investigate these things, at least I have to send someone or go myself to see these people and find out. I don't take everything a client tells me for granted. I like to make inquiry and I'm telling you that I can't do it by the 18th.

THE COURT: For the purposes, assume your client's statements to you are true, how many witnesses and how many are they?

MR. POLAKOFF: I'll let you know.

THE COURT: You know now?

MR. POLAKOFF: I can't talk to him now, that's not fair.

THE COURT: You are asking for an adjournment for two months based on what he told you. I'm asking you in general terms, how many witnesses and where are they.

MR. POLAKOFF: Three are from Mexico, three from Acapulco -- I forgot about that.

MR. PUCCIO: Acapulco is in Mexico.

MR. POLAKOFF: Catania cheated certain people

and that would indicate that he was involved, and that would indicate a motive. He rented a home in Acapulco. He gave the money to Catania to pay the owners, Catania absconded with the money, that would show motive, that's important. How am I going to do it in two weeks.

THE COURT: The Government said they are ready to consent. I think the flights down to Mexico are three or four hours.

MR. POLAKOFF: It's five hours. I need time to prepare the case, interview my clients and do all that in two weeks?

THE COURT: You have any help in your office?

MR. POLAKOFF: I'm the last of an old breed. I'm a single practitioner. I was a member of a firm from 1926 to 1937, Perlman, Blau & Polakoff and since that time I've been a single practitioner and I consider myself the last of an old breed.

THE COURT: Let me give you a guide. In the last case and the only case that I know where anybody brought anything back from depositions in foreign countries was Mr. Ivan Fisher, who asked me for something two or three weeks, to go down and take depositions.

MR. PUCCIO: Was this a case that I was involved in -- yes, Baeza.

THE COURT: He had to set up all video tapes and thats all he needed was to interview three or four people. They took them all on video tape.

MR. POLAKOFF: Your Honor, I don't understand the pressure in this case. It isn't as if I'm asking for an undue delay. It isn't that I'm asking -- I would even settle for a month, but I do need some time to prepare this case and get myself --

THE COURT: You'll settle for a month from today? We might pick a jury on the 18th and go to trial on the 25th.

MR. POLAKOFF: Today is the 31st, your Honor.

My address is 450 Park Avenue, 57th Street and Park Avenue.

THE COURT: All right, fine.

MR. POLAKOFF: Will the defendant be brought down here tomorrow.

MR. PUCCIO: I'll make that arrangement.

MR. POLAKOFF: Will the defendant be temporarily placed at 11th Street.

THE COURT: That's up to whatever security provisions -

MR. POLAKOFF: Your Honor has no jurisdiction over there.

THE COURT: Oh yes, but you haven't made out a

case for that. Where the Government offers to bring the defendant here -- are you going to interview the defendant here now.

MR. POLAKOFF: I'm going to talk to him.

May I take his wife in with me, she's here in the Courtroom.

THE COURT: Any objection to that?

MR. PUCCIO: No.

THE COURT: You have a private room downstairs.

Mr. Rosenthal, before you leave you identify the name of the doctor. I want a full report.

MR. ROSENTHAL: I believe the doctor's name is C-a-s-s-e-l-l.

THE COURT: What institution is that at?

MR. ROSENTHAL: At Lewisburg. One of the problems is that Mr. Fruchtman has been trying to speak to Dr. Cassell for the last week, calling him in Pennsylvania every day for the last week. I'll see if I could get a full report.

Your Honor will recall the last time Mr. Fruchtman was in Court he requested a speedy trial and he has no desire in prolonging this except the health of Mr. Oddo.

THE COURT: In other words, he would still insist on a speedy trial.

MR. ROSENTHAL: I understand that.

THE COURT: Let's have this in, Mr. Polakoff. You would oppose any adjournment until November 18th?

MR. ROSENTHAL: We are in a position whereby Mr. Oddo's health would not permit him to try the case. I just informed the court, as an officer of the Court, that in any event if the People wanted to proceed with all three, they wouldn't be able to proceed with Mr. Oddo.

THE COURT: That's subject to a proper reading of that report. If I find there is nothing in the report to delay the trial Mr. Oddo will be brought here and you would want him tried on the 18th.

MR. ROSENTHAL: Yes.

THE COURT: You would insist on a trial on the 18th.

MR. ROSENTHAL: Yes.

THE COURT: Try to see whether defendants can agree on anything. Too often one defendant says I want an adjournment the other says I want a speedy trial.

MR. POLAKOFF: There has been no collusion between me and Mr. Fruchtman. Mr. Fruchtman told me he was in Court, Mr. Clark told me -- I don't want to indicate in any way that there was collusion -- and

Mr. Fruchtman did tell me if it was for a short adjournment so that I could get ready he wouldn't have any objection because his client is still in jail, so whether it's a month later or not it wouldn't inconvenience his client.

THE COURT: Our speedy trial rules -- sometimes I do suspect that the defendants do not want a speedy trial, it's a manipulation, as soon as the Judge says trial they now find the time or reason for not wanting it just that day, that's just the day of their anniversary, birthday.

MR. POLAKOFF: Your Honor shows very little respect for attorneys. I think attorneys when they make an application to your Honor they make it in good faith. I told your Honor that I'm moving my office today, October 31st.

THE COURT: What I said has nothing to do with your application. You're not claiming a rights to a speedy trial.

MR. POLAKOFF: I want a speedy trial but I don't want a trial where it denies me the right to properly prepare my case. I would like to get the case over as much as your Honor would, but I feel I'm entitled to do a good job for my client and I can't under the circumstances.

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THE COURT: I'm sure you will, and with a good try I'm sure you will.

MR. POLAKOFF: I am the judge of my own ability and you're talking about running and doing.

THE COURT: I don't know about that. You can't tell me that your pace is so slow that you can't get ready within the time that I fix as reasonable.

MR. POLAKOFF: Yes, I have to do research. The law has changed. We have a new narcotics law, it's a question whether he had been properly indicted under the right section.

MR. PUCCIO: This case is under the old law.

MR. POLAKOFF: That is a question whether it should be under the new law.

THE COURT: May I have the period of time?

MR. PUCCIO: It was December 1970, January '71; so the new law went into effect May 1.

MR. POLAKOFF: I am sure they will have overt acts afterward.

MR. PUCCIO: The indictment only acknowledges overt acts after May 1.

MR. POLAKOFF: And you also said co-conspirators

known and unknown to the Grand Jury. We are entitled to the --

THE COURT: Why don't you ask for that and you'll get it. That' doesn't require motion. Do you know of any that are unknown?

MR. PUCCIO: We will give you the names of the co-conspirators that are known.

THE COURT: In other words, these matters that used to take motion papers, arguments, memorandum, now are delivered on a request. You could get that information in two minutes.

MR. POLAKOFF: The attorneys haven't been able to get it.

MR. PUCCIO: The attorneys --

THE COURT: I would like the attorneys to come in here face to face with Mr. Puccio --

MR. ROSENTHAL: Your Honor, I started to go over the history as I know it, because I was present in my office at least on two occasions when Mr. Fruchtman within the last two or three weeks has called Mr. Puccio, and he hasn't been given the courtesy of even a return call.

THE COURT: Were you told when you came in if you didn't get what you were entitled to to just send a notice to me, put it on the calendar, we'll

iron it out.

MR. ROSENTHAL: I sent a letter to Mr. Puccio.

THE COURT: Did I say that?

MR. ROSENTHAL: I did send a letter to Mr. Puccio after we received a copy of the letter from Mr. Clark, and your Honor, I believe, we sent a copy to your office which I dictated about those tapes -- I would appreciate, I am sure Mr. Fruchtman would appreciate if he would call us back.

THE COURT: What else did you do to bring it to the Court's attention?

MR. ROSENTHAL: I wrote your Honor.

THE COURT: You didn't ask that it be on for a hearing or a conference. You think you just rest on your butt and hope that the stuff is never --

MR. ROSENTHAL: I argued a case before the Court of Appeals, conviction was reversed from the bench which in effect says once a counsel makes a demand it's not his position to run all over the court house and get it, it's the U.S. Attorney's duty to turn it over to counsel.

THE COURT: Which court was that?

MR. ROSENTHAL: The Second Circuit, Court of Appeals.

THE COURT: In which case?

MR. ROSENTHAL: People versus Petrone.

THE COURT: And you say it says that?

MR. ROSENTHAL: That's in effect what it says, that the fact, that it says the U.S. Attorney was to turn over statements that it took of my client.

THE COURT: Never turned it over.

MR. ROSENTHAL: Exactly. It became known on the date of trial and it was reversed, the conviction was reversed from the bench.

MR. PUCCIO: Can I make a statement for the record? One item that we are discussing and that is the transcripts which are very short of these --

THE COURT: Did you read Petrone?

MR. PUCCIO: There are many Petrones.

THE COURT: Read it. I like to check lawyers when they say it says this and says that.

MR. ROSENTHAL: It doesn't say that in such words. I'm telling you the facts as it happened. I was part of that case from the beginning until it was argued to the Court of Appeals.

THE COURT: He said it was reversed from that bench. Was there an opinion?

MR. ROSENTHAL: The judgment is his opinion.

THE COURT: I'll read it. It better say that

or say it to that effect.

MR. PUCCIO: I indicated to Mr. Clark sometime during the summer that we did have these wire taps. We were going to get the conversations transcribed.

The tapes themselves have always been available. There is about 70 per cent in English. They could listen to it anytime, the entire thing takes a half hour to listen to.

I told Mr. Clark I'll try and get them typed up. Everyone indicated there was no real possibility, no likelihood of a trial date until Mr. Cotroni was extradicted. I called Mr. Clark. I had a draft and I was working on it.

THE COURT: Mr. Rosenthal, some day I'll accept a temporary assignment to the Court of Appeals, and I've been offered one and turned it down, just so I could say I'm sick and tired of watching defendants' lawyers sit on their butt and expect the Government to spoon feed every bit of evidence that they should use on trial.

I've seen lawyers say I want such and such a witness, did you serve a subpoena, no I want the Government to find the witness for me, I want the Government to do this investigating for me.

MR. POLAKOFF: Your Honor, the Government has

two, three years to prepare their case. You are giving us three weeks.

THE COURT: How do you know that?

MR. POLAKOFF: From the time it came in, from the time the indictment was filed.

THE COURT: And you want to know something, the product of those two or three years in the main is incorporated in the extradiction proceedings and the rest of it will be given to you, so you will have the benefit of two, three years of investigation.

MR. POLAKOFF: No, they didn't give us what's beneficial to us.

THE COURT: I'll direct them to give anything that's beneficial to the defendant.

MR. PUCCIO: No request has been made.

THE COURT: Now you have it without a request.

MR. POLAKOFF: Bradey against Marilyn, we would like to have Catania's report.

MR. PUCCIO: I'll make that available.

THE COURT: That was 3500 material on Catania.

MR. PUCCIO: It's a public record. There are more disclosures.

MR. POLAKOFF: The defendant testified before the Grand Jury.

MR. ROSENTHAL: Your Honor, may I say this, please, please. I am always willing to cooperate with the prosecutor. Mr. Puccio said he was preparing the transcript. I would have no objection but Mr. Fruchtman wasn't given the courtesy of a call; even persons in the District Attorney's office, United States Attorney's office who I call, I have to call two or three times.

I've yet to be given a return call.

THE COURT: How many times did you call Mr. Puccio?

MR. ROSENTHAL: Three times.

MR. PUCCIO: I was on vacation during August.

MR. ROSENTHAL: During September and October.

THE COURT: It's still inexcusable.

MR. POLAKOFF: Was Catania a witness before the Grand Jury? Will they give us his Grand Jury testimony?

THE COURT: You are not entitled to it yet.

MR. POLAKOFF: But in the Southern District the judge orders those given in advance.

THE COURT: United States against Percival. If a judge has ordered before United States against Percival he won't do --

MR. PUCCIO: We'll do that.

THE COURT: You have a very cooperative U.S. Attorney.

The next problem with your client is whether he is unable to stand trial and I'm not going to pass on that until I see the report.

MR. ROSENTHAL: Would your Honor want us to communicate?

THE COURT: I beg your pardon?

MR. ROSENTHAL: Your Honor wants us to communicate with Dr. Cassell?

THE COURT: You use your reference and I'll use mine. I'll telephone and ask him to get the report here in a hurry. You assume you are going to trial.

MR. ROSENTHAL: Mr. Fruchtman has assumed --

THE COURT: Who is trying the case?

MR. ROSENTHAL: Mr. Fruchtman is going to try the case.

THE COURT: All right.

(Whereupon the matter was adjourned for the day.)

I hereby certify that the foregoing is a true and accurate transcript from my stenographic notes in this proceeding.

Official Court Reporter
U. S. District Court

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FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
JAN 9 1975
TIME A.M.
P.M.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

- against - : 73-CR-848

FRANK CATRONI, ET AL. :

- - - - - - - - - - - - - - - - - - x

United States Courthouse
Brooklyn, New York

November 11, 1974
4:00 o'clock p.m.

B e f o r e:

HONORABLE JACOB MISHLER, CHIEF U.S.D.J.

I hereby certify that the foregoing is a true and accurate transcript from my stenographic notes in this proceeding.

Official Court Reporter
U.S. District Court

MICHAEL PICOZZI
OFFICIAL COURT REPORTER

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Appearances:

DAVID G. TRAGER, ESQ.,
United States Attorney
for the Eastern District of New York

BY: THOMAS PUCCIO, ESQ.
Assistant United States Attorney

MR. POLAKOFF, ESQ.
Attorney for defendant Catroni.

MR. KLAR, ESQ.
Attorney for defendant Dasti.

MR. FRUCHTMAN, ESQ.
Attorney for defendant Oddo.

THE COURT: United States against Catroni.

Mr. Polakoff, I understand it is your motion and you move to suppress certain wiretaps.

MR.POLAKOFF: Yes, your Honor.

THE COURT: Can you give me the grounds?

MR. FRUCHTMAN: May we join in the motion?

THE COURT: Surely.

Whose phone was wiretapped?

MR. POLAKOFF: According to the information we have, Catroni's phone was tapped. Catroni's conversations were tapped. Either as the sender or receiver.

MR. PUCCIO: Can we fix the date on the --

THE COURT: First, I want to talk about standing. You normally don't have more than one person who challenges as illegal the wiretap itself. Usually it is the person on the telephone or who owns the telephone. I want to know if you have standing to challenge the wiretap?

MR. KLAR: The defendant Dasti was also tapped.

MR. FRUCHTMAN: As far as I understand, Mr. Puccio says the voice of Paul Oddo was captured onthe illegal tap.

MR. PUCCIO: For the record, we received, in connection with this case, tape recordings of telephone conversations intercepted by the police in Canada.

The entire set of recordings that I received, and many of which we hope to produce at trial, I have reproduced and I have supplied each defense attorney with a cassette that contains all of the recordings I received.

THE COURT: Each attorney?

MR.PUCCIO: Yes.

THE COURT: Both his client and co-defendants?

MR. PUCCIO: Yes.

Some of the conversations are between Catroni and Dasti and some are between Dasti and Oddo. All the defendants present had the conversations interrupted at one time or another.

Now, I also played for all the defendants, and their attorneys with the exception of Mr. Oddo, who is in Lewisburg apparently ill --

THE COURT: Did any of the telephone calls originate in the United States or are they all in Canada?

MR. PUCCIO: Some of them originated in the United States but the interception was entirely on the Canadian end. There were no interceptions made within the United States but there were interceptions of Mr. Oddo for instance if he happened to call Mr. Dasti.

The wiretap was on Mr. Dasti's phone. And the conversations, by the way, between Catroni and Dasti

are in French and I did provide a transcript to defense counsel. The only thing I haven't provided, but I will either later today or tomorrow morning, are transcripts of the conversations that are in English. Since the attorneys have had the conversations themselves since November 1st, and of course speak English, I don't think that is a problem.

That is the background --

THE COURT: What is the motion?

MR. POLAKOFF: This case is being tried under the laws of the United States. The defendants are in the United States. And the law of the United States would apply. Since 1968, I believe it is June, we have had the safe street act where no phones are permitted to be tapped unless pursuant to a proper Court order. Prior to that time, we have section 605 of the Communications Act which made it a crime under all circumstances to tap the phones.

THE COURT: Can you cite an authority that says foreign taps must be in conformance with the United States laws?

MR. POLAKOFF: Not within the time you gave me. But where the phone originates in New York there is no question about that.

Now, Canada passed a law in June --

THE COURT: You say there is no question even though the tap was in Canada?

MR. POLAKOFF: That's right.

THE COURT: Do you have any authority for that?

MR. POLAKOFF: No, I haven't. I haven't had a chance even to start looking.

THE COURT: The only case I know is United States against Toscanino. In that, Judge Anderson said -- well, I would never go that far, that is rediculous. He didn't use that language, but almost.

MR. PUCCIO: Quoting from Toscanino, and I hate to rely on it because I don't agree with all of it, but this much I do agree with, footnote number 9 on page -- well, I don't have the page, but footnote number 9 reads:

"The constitution of course applies only to conduct abroad of agents acting on behalf of the United States. It does not govern the independent conduct of foreign officials in their own country," citing Birdsell. "Whether or not United States Officials are substantially involved, or foreigners are acting as their agents or employees, it is a question of fact to be resolved in each case."

Stonehill against the United States, U.S. 405 F.2d 738.

It goes on to say --

THE COURT: The government is trying to defend my position in Toscanino. They haven't been successful so far. On one thing they are certain, that is the implication of Toscanino which is if the taps are in conformance with the law of the place of the tap, if our Government did not participate in the illegal tap, then there is no challenge to the admissibility of the evidence.

MR. POLAKOFF: Number one, we believe we haven't had the time to explore the situation. Our Government agents worked in conjunction with the Canadian Agents.

THE COURT: In the tap?

MR. POLAKOFF: I don't know.

MR. PUCCIO: I can state this --

THE COURT: You have the burden of proving that.

MR. POLAKOFF: We only can prove it by examining witnesses. I am not surmising, guessing, or making a positive statement, but it is an area we're entitled to an investigation into and a hearing.

MR. PUCCIO: Your Honor --

MR. POLAKOFF: May I finish, your Honor?

In June of '74, Canada passed a law requiring court orders for taps. As I read the law it says any wiretap evidence, unless inconformity or unless lawful

as they use the word, shall not be used in evidence.

So it is my contention it may not even be used in evidence in Canada.

MR. PUCCIO: May I respond?

THE COURT: If it is illegal in Canada, you may have an argument but I think that is the first question. Right?

If these taps were lawful taps --

MR. PUCCIO: My position is it doesn't make any difference whether they are legal or illegal. As it happens they were legal in Canada.

In the discovery material, the additional material I handed over to defensel counsel November 8th, I have an item 42 which consists of an opinion letter.

Your Honor has a copy of that in the courtroom. It is from L. P. Landry, Regional Director, Federal Department of Justice --

THE COURT: Did you say page 42?

MR. PUCCIO: Item 42. Mr. Landry is the regional director of the Federal Department of Justice in Canada.

I will summarize what he says, and he includes authority which I also included in item 42 and passed along to the defense. Mr. Landry states that prior to the enactment of the new act which is a privacy act,

which went into effect June 30, 1974, wiretapping was legal inCanada. In Quebec.

THE COURT: Without court order?

MR. PUCCIO: Yes, and what was necessary was the authorization of the Chief of Police in a given area.

Now, that's how this particular wire tapping was conducted.

Now, Mr. Landry cites two cases which have been decided since the enactment of the privacy act, and those cases are attached.

THE COURT: That is pretty recent, October 18, 1974.

MR. PUCCIO: Excuse me, your Honor.

THE COURT: I say that is very recent, October 18, 1974.

MR. PUCCIO: Well, the two cases are cited. They are attached, and both of them indicate that the act is not retroactive.

If this evidence was contained lawfully prior to the enactment of the new privacy act it is admissible today in the courts of Canada.

So that based upon the opinion and supporting cases, I would subrit that the surveillance was conducted legally at the time and admissible after it was taken and

admissible now in Canada even after the passage of the act.

I see no authority on the contrary.

MR. POLAKOFF: We just got this this morning. An opinion of Attorney General has no greater weight as far as I'm concerned than the opinion of Mr. Puccio.

MR. PUCCIO: I am not --

THE COURT: On the interpretation of the Canadian law --

MR. POLAKOFF: May I also have the opportunity of obtaining opinions from eminent lawyers as to what we regard the law to be?

I read that quickly and I only got that this morning. I had to go to jail to see my client which I will come to later. That is subsequently, I will argue that later.

THE COURT: You said you wanted to examine witnesses. On what issue?

MR. POLAKOFF: On the question of whether the American authorities were involved with the Canadian authorities in this investigation. I have no proof here either way.

MR. PUCCIO: Can I make this one point? I can state for the record that our agent in Montreal at the time was made aware of conversations that were being

intercepted. In other words, he was briefed on these conversations as they were intercepted and I have reports he wrote at the time indicating what was going on based on information supplied to him by the Canadian police which they gained from wiretaps.

I don't think we have to go into the degree of the United States Government participation although as far as I know that was their only participation -- they did receive the information.

Because the wiretaps were in fact legal. I read the cases and I invite defense counsel to read the cases. There are two recent cases decided by Canadian judges. The act is not retroactive and they give reasons. I think we should reach that question first before we are called upon to bring witnesses in to find out --

MR. KLAR: With respect to what Mr. Puccio says, a copy of theletter and the cases have been sent to Montreal today to counsel who have been working on this case with us.

THE COURT: Can you name the attorney?

MR. KLAR: Sidney Leithman. His office has been hired for purposes only of examining the cases and doing research as to the applicable Canadian law.

THE COURT: Did you retain him?

MR. KLAR: He is not retained. He made his offices available for any questions of law that may be applicable.

THE COURT: Free of charge?

MR. KLAR: That is correct.

MR. PUCCIO: He represented another -- he was one of the lawyers representing Catroni at the extradition. He isn't exactly a stranger to the case.

MR. KLAR: He is familiar with the case. There has been no showing by the United States Government of any authorization of the Chief of Police of Quebec.

MR. PUCCIO: I can say for the record I questioned the police who conducted this wiretap and they did receive the proper authorization. I think Mr. Landry indicates inhis letter to me that he checked himself.

I could produce --

THE COURT: Where is the authority filed?

Is it in writing?

MR. PUCCIO: I don't believe it is in writing, your Honor. I can quote to you from the -- by the way, the police officer who received the authorization, we would call at the trial to introduce the tapes and he could be queried on that.

I would cite the case of Her Majesty the Queen against Barton, Roy, Lesarge --

THE COURT: Do you have the copies of the opinions or --

MR. PUCCIO: It is right in tne brief. Here they are discussing the procedure in Toronto which is a neighboring area, of course, and Mr. Landry says that he checked and the same procedure existed inthe province of Quebec.

I quote from the opinion, page four of the copy the policy with respect to the use of wiretaps by members of the Metropolitan Police Force prior to the protection of privacy act, this is a new act where certain steps have to be taken -- and this is the policy in Toronto when there is reason and probable cause that a criminal offense had or was about to be committed --

MR. KLAR: We arein Quebec, not Toronto. That is a different jurisdiction.

MR. PUCCIO: Can I finish?

MR. POLAKOFF: This is like state court jurisdiction, there is no federal jurisdiction.

MR. PUCCIO: The polic officer who conducted the surveillances were not federal police officers, they happen to be the Quebec provincial police, --

THE COURT: How is authorization given by the Chief of Police? Does he just call someone else?

MR. PUCCIO: One of his men would come to him and tell him there was a need for a wiretapping on a particular investigation and he would say yes or no.

THE COURT: No record is made?

MR. PUCCIO: Not in a public record, an internal document of the Police Department.

MR. FRUCHTMAN: Do we have those?

MR. PUCCIO: I can try to get them. It may be just oral. It was that informal at that time. It was only necessary for you to go to your superior.

MR. KLAR: From a quick reading of the case we received from Mr. Puccio, it was on that point that the police clearly had kept internal records that the wiretaps were declared admissible in evidence. I would suspect, without records being kept, the taps would not have been admissible. There is no showing there was any written authorization or approval by the Chief of POlice in Quebec.

THE COURT: Do you say written authorization is necessary?

MR. KLAR: Apparently each of the provinces in Canada had their own internal rules on wiretapping. There was no statute in effect in 1971 at the time of this tap. The internal rules of the Police Department

were to the effect there must be police approval by either the police chief or whoever else was in charge. In our case we don't know if there was such approval.

MR. PUCCIO: I am stating we will have someone who will testify, the fellow who conducted the surveillance, that he received the proper approval from his superior.

MR. FRUCHTMAN: As far as that is concerned, the fact he said he got proper approval doesn't mean he got it --

MR. PUCCIO: We can prove the --

THE COURT: On what is this procedure based?

MR. PUCCIO: The internal rules of the Police Department are not based upon any statute or any court decision.

In other words, at this time it was relatively easy to install a wiretap in connection with a criminal investigation. It was only necessary for the police officer to go to the supervisor, whether the chief of police or whoever the head man was, in the police force in Montreal and ask his permission.

THE COURT: Was this based on some practice that grew up in Canada on wiretaps?

MR. PUCCIO: It was based upon their internal regulations of the Police Department.

THE COURT: So the POlice Department made the rulings?

MR. PUCCIO: That is correct.

MR. POLAKOFF: Each province has their own ruling.

MR. KLAR: These taps which are the subject of this proceeding may have been going on for three or four years prior to the information obtained.

I don't think the original taps were taken for the purpose of a narcotics investigation. I think they were for Canadian use for Canadian crimes other than narcotics investigations.

MR. PUCCIO: The recordings were not made with the idea in mind that someday the United States would prosecute Catroni and they would be offered in evidence.

THE COURT: The only question is whether initially they were lawful taps in the province.

Do you agree it wasn't Canadian law but provincial law that governs?

MR. PUCCIO: In this particular situation it would be the law of the province of Quebec.

THE COURT: Where do we get the internal rules?

MR. PUCCIO: I have asked for them. I am looking for the portion of Mr. Landry's letter where he alludes to them.

Well, on page one of his letter to me:

"The use of electronic listening devices by police forces would normally be done under the authority of internal rules within each police force. An example of such rules appears in the case of Copeland and Adamson."

THE COURT: Do you think they are more or less uniform throughout CanadA?

MR. PUCCIO: Yes.

MR. FRUCHTMAN: What authority do you have for that?

THE COURT: These are the only rules we have. In order to get a headstart on it I would like to know whether, without conceding, but assuming these aretthe rules --

MR. PUCCIO: He said on the last page:

"I have reviewedthe procedure followed by the Quebec police officers who were instrumental in the use of electronic listening devices in the present case--"

THE COURT: Page three of 42?

MR. PUCCIO: Page three of Mr. Landry's letter to me which is part of 42.

THE COURT: The last page?

MR. PUCCIO: Yes.

"I have reviewed the procedure followed by the

Quebec police officers who were instrumental in the use of electronic listening devices in the present case. I have found that in this case the officers did consult the proper superior officers of the Quebec provincial police and did obtain an authorization from such officers to carry on the proposed interception involving in particular Mr. Frank Catroni.

This would therefore place this case squarely within the ambit of the decision rendered in the Copeland case."

MR. POLAKOFF: As far as Mr. Catroni, when did his wiretap start?

MR. PUCCIO: This is a different question, your Honor. I don't have all the information as to when it started and when it ended.

I have given the defense attorneys what was given to me.

In fact, I have given them conversations, entire groups of conversations, that were given to me. I have given conversations which I don't think are relevant to this case.

THE COURT: What happens to the illegal wiretaps in Canada, are they barred or is there another method used in discouraging illegal wiretapping?

MR. PUCCIO: Today, they are not admissible if

they are not conducted according to the evasion of privacy act. Prior to that time, I don't think you will find cases of police officers involved in illegal wiretaps. It was only necessary to get the approval of the supervising officer.

You find situations where private citizens conducted them and that is against the law.

MR. POLAKOFF: If your Honor pleases, the case is being tried today. It is my opinion that we are governed by the laws as of today. I recall the Dessit case where the Court didn't make it retroactive but said the law shall apply to any trial hereafter.

This is a trial after.

MR. PUCCIO: Mr. Polakoff has not read the material. I think he should read the material before making blanket statements. There is a discussion of the retroactivity by two different Canadian judges.

(Continued on next page.)

MR. POLAKOFF: I am talking of our law. This case is being tried in the United States.

MR. PUCCIO: Not under the United States wiretapping statute. Even Toscanino says the United States law doesn't apply to cases tried in the United States.

THE COURT: You think even if it is lawful and even if the Canadian courts would admit it, that we should test it by our wiretap laws and if we find it unlawful, we shouldn't admit it here?

MR. POLAKOFF: That is my opinion.

MR. PUCCIO: Toscanino says: "We agree with the Government -- " at least they agree with us on something -- "that the federal statute governing wiretapping and eavesdropping has no application outside of the United States. . . the statute significantly makes no provision for obtaining authorizations for a wiretap in a foreign country.

MR. POLAKOFF: May I have that citation, please?

MR. PUCCIO: It is a slip opinion. We have a copy. It's dated May 15, 1974.

MR. POLAKOFF: Okay.

THE COURT: The very purpose of barring illegally seized evidence from admissibility is what we call the prophylactic effect, we want to make sure --

MR. POLAKOFF: Preventing the police officers from --

THE COURT: You understand. But barring a wiretap that is admissible in Canada --

MR. POLAKOFF: We don't know if it is admissible in Canada.

THE COURT: I asked Mr. Puccio and he said yes, that is his --

MR. POLAKOFF: Your Honor missed my point and I probably didn't make myself clear.

Today this evidence would not be admissible in Canada in my opinion, there fore it is not admissible in the United States. The question of retroactivity is a question I am not satisfied with with the cursory reading of the material submitted to us today.

But we have a further problem.

THE COURT: When I am ready to set it down for an evidenciary hearing this Thursday, I don't understand the issue we have for hearing. Witnesses will testify to what?

MR. POLAKOFF: I have some further things that have to do with the wiretaps and your Honor may consider that. We got extracts of wiretaps picked out by whom, I dont know. We are entitled to the entire wiretap. They may have exculpatory testimony, testimony

that may shed a different light. Even the prosecutor and Canadians picked out certain material. Let me give you an example, your Honor, we have I think five different wiretaps. The one on January 1st, 1971, is between eight and sixteen hours. That is six hours of wiretaps. I don't think they have the authority to --

MR. PUCCIO: All that means is this particular conversation was intercepted sometime between eight and sixteen hours.

MR. POLAKOFF: Was that the only conversation intercepted?

MR. PUCCIO: I couldn't say whether it was the only conversation.

THE COURT: Is this the old conversation you have on the tape?

MR. POLAKOFF: Just extracts.

THE COURT: Mr. Puccio?

MR. PUCCIO: It appears to me, listening and reading to them, every conversation but possibly one is complete. There may be a conversation which it appears a little may have been cut off at the beginning. I have given -- I can explain what I have given to the defense attorneys. At the time this electronic surveillance was conducted this was not the only wiretap

that the Quebec provincial police were operating. They were operating many at the time. They didn't keep every tap. They had several tape recorders going and, by the way, these are automatic. When the telephone conversation is --

THE COURT: Is that the tape that you have?

MR. PUCCIO: No, I don't have the original tape. What they did was examine the tapes, find what was relevant -- they didn't have any minimization, every conversation that went over the phone was recorded. They would take the conversations relevant and put them on the master tape.

They did not keep the original tapes, they were destroyed and the tapes were reused.

When I asked them for the wiretap inthis particular case, the Quebec provincial police in conjunction with the Royal Canadian Mounted Police took out from the master tape what they had. It does not include every conversation recorded during that period.

The pertinent conversations are recorded. They made up a second tape which he sent to me which includes the pertinent conversations.

I haven't even heard the master tapes, but they will bring the master tapes down to the trial.

THE COURT: How long would it take to hear the

master tape?

MR. PUCCIO: I don't know. I would submit that we are not required to give the defendant anymore than we have given them up to this point. We have given them what we have gotten and these taps were conducted lawfully in another country.

We heard no offer by the defense as to what was on the missing portion.

MR. PELAKOFF: How could we?

MR. PUCCIO: There is no reason for us to hand them over for a fishing expedition.

THE COURT: How about the officer that intercepted them, will he be produced?

MR. PUCCIO: Yes. Again, this is not a situation where an officer would be sitting with earphones at each tape recorder. Much was done automatically.

We can try to produce the officers that screened the initial tapes and transferred the pertinent conversations to the master tape.

Again, I submit there is no obligation of disclosure if we are not told at least in the first instance what is missing. What does the defense allege was said during the other conversations?

I submit even if this were conversations which were helpful to the defense and those conversations were

no longer in existence, it --

MR. POLAKOFF: Your Honor, I believe that the people who made tapes must produce all the tapes. It is for the Court to determine what is material. And in the Watergate case the Court only determined what was material in the national interest.

Otherwise defense counsel got all the tapes. The prosecution could offer whatever portions they want. The defense could offer portions they wanted. But the defense has got to have all the tapes. We don't know if these tapes are legitimate.

You can take tapes, if you are cutting them apart, and make all kinds of stories which may not be --

MR. PUCCIO: Your Honor --

MR. POLAKOFF: Let me finish.

On Tuesday, the 12th of January, the tapes were on between eight and twenty hours. That is twelve hours of tapes.

THE COURT: Mr. Puccio said that is not true. It means the taps were on, it doesn't mean the conversations were on.

MR. POLAKOFF: There may be a lot of other conversations that were on which may be significant.

MR. PUCCIO: So what?

MR. POLAKOFF: We would like to know.

And here we've got a log. I don't know what this log means.

MR. PUCCIO: I can sit down and explain it to Mr. Polakoff.

MR. POLAKOFF: What are these figures?

Is that the time for all the taps? There must have been other conversations, why aren't we entitled to them? For us to judge what we want --

THE COURT: How did you identify the voices?

MR. PUCCIO: We have witnesses who will identify the voices. Frank Catroni has been the subject of investigation in Canada for a long time. Several people in law enforcement are familiar with his voice.

THE COURT: In none of the tapes did anyone hear the voice, it was automatically recorded?

MR. PUCCIO: I don't know if that is so. I think there were many automatically recorded.

THE COURT: How many taps do you intend to introduce into evidence?

MR. PUCCIO: You mean conversations?

THE COURT: Yes.

MR. PUCCIO: I intend to produce the five French conversations between Catroni and Dasti, Catroni only appears on the five French conversations, then there are maybe fifteen other conversations which are in

English which I hope to introduce.

THE COURT: I think what Mr. Polakoff is asking for is the original conversations all during the time the taps were on.

MR. POLAKOFF: That is correct.

THE COURT: And at least for the period that during which the excerpts are offered, or failing that, bring in the parties who edited the tapes.

MR. PUCCIO: He will be called at the trial, your Honor, to testify as to how the recordings were made. I can attempt to do that. I would ask your Honor to bear in mind thatI have no -- I cannot direct the Canadian Government to supply me with additional materials. I can request that they do it.

THE COURT: That may be unfortunate for the Government.

MR. PUCCIO: Again, your Honor --

THE COURT: I will have to do a little work on this, since this is the first time I have had a tape of a conversation offered without having the parties listen in and using the tape to corroborate what he heard or refresh his recollection as to what he heard.

MR. PUCCIO: It doesn't only corroborate a witness, for instance Catania was never intercepted --

THE COURT: I am talking about how you get the

tapes into evidence.

MR. PUCCIO: We can show your Honor how these conversations fit in with the events that we allege took place during this period of time and I think it is self-evident from many of the conversations -- in other words, the conversations speak for themselves and we can identify the voices.

There was surveillances conducted by the police in Canada after they would hear different conversations. They would then conduct a surveillance.

THE COURT: Do conversations speak for themselves?

MR. PUCCIO: If the people are identified, I don't see why not. If they are talking about narcotics and talking about cocaine which is clear --

THE COURT: In every case I've had where tapes were introduced the witness said "I had this conversation," or "I intercepted this conversation, I heard this," and then the tapes are offered to show indeed that is just what happened.

But the defendants' lawyers cross-examined the witness who heard the conversation, not the tapes that were recorded.

MR. PUCCIO: Your Honor, this is one way the tapes can be used. For instance, if you have a witness

testifying concerning a narcotics shipment and he delivers to an individual person and that is as far as he goes, however the police have a wiretap on the person who received the narcotics and he is heard calling someone else and selling it to someone over the phone, I submit that is admissible.

THE COURT: On what theory are the tapes admissible?

MR. PUCCIO: Acutal recordings of what was said at the time.

THE COURT: Is that the evidence?

MR. PUCCIO: That is the evidence itself. What was said.

THE COURT: I never thought of it that way.

MR. PUCCIO: Well, I know there are situations where an undercover agent wears a tape recorder -- this is not that situation -- this is a situation where --

THE COURT: But when the conversations are offered it is what the agent heard that goes into evidence. Isn't that true?

MR. PUCCIO: Yes.

THE COURT: Not the recording that is automatically made.

MR. PUCCIO: It is like a photograph.

THE COURT: I don't think I can analagize it to a photograph.

MR. PUCCIO: I think I can analagize it to a photograph.

THE COURT: Let's say it was a video tape, how would you get it in?

MR. PUCCIO: If it is relevant and the tape reflects part of a conspiracy, I would assume it is admissible as a scientific reproduction of what happened at the time.

Just as this is a recording being made now of what we are saying.

THE COURT: A scientific reproduction -- that sounds as if it has authority. I know that a witness swears and he testifies. That is easy. I know that certain exhibits are marked in evidence.

How do you get a tape in?

MR. PUCCIO: You have the person who either made the tape or started the process or set up the process which was responsible for the recording being made.

In other words, the person who set the tape recording up in such a way that when the phone rang it records the conversation. The tapes could be examined that we have. I think we can show how a recording is made. I guess we can have an expert come in and show us how the tape recording works.

THE COURT: Show me a case where a tape was marked in evidence without live witnesses coming in who were parties to the conversation.

MR. PUCCIO: The Stepenberg case maybe one.

THE CLERK: The case that is being tried now in Washington is one, your Honor.

THE COURT: I don't know that that is so, there are parties to the tape that testified what happened.

And in Stepenberg --

MR. PUCCIO: I think there was conversation, --

THE COURT: No, there were police officers that had earphones on all the time and they decided when to record.

It wasn't just automatic recording.

MR. PUCCIO: There is no difference.

MR. POLAKOFF: Because the police officers are not permitted to record extraneous conversation, conversation between husband and wife or --

THE COURT: That is the minimization theory and Judge Pollack has a lengthy hearing on it right now.

MR. PUCCIO: Is your Honor worried about the reliability?

THE COURT: No, the admissibility.

MR. PUCCIO: The police officer who was listening in while the conversations were taking place, if he

died, I think the conversation itself which is better evidence than his recollection would be admissible.

I will look for another case. I think Judge Weinstein had one, the United States against Olatti, where the testimony against him was a tape recording--but I will check on that.

MR. POLAKOFF: Your Honor, coming back to my original premise, they are going to offer tapes of five days, according to what Mr. PUccio said. These are extracts. I think -- I request all the tapes for that particular day.

THE COURT: On that phone?

MR. POLAKOFF: Yes.

It is the phone of one of the defendants.

THE COURT: All the tapes on the taps for that phone during the period of time that the tap was on. For example, if the tap was on from 8:00 o'clock in the morning until 12:00 o'clock at night --

MR. PUCCIO: Your Honor, I will make an attempt to get them without relinquishing my argument that it isn't necessary.

If the Canadian Government has no problem, I certainly will make them available. If they refuse, I would like to press my argument we don't have to do that.

MR. POLAKOFF: May I respectfully, unless the other attorneys want to say something further on the subject, address myself to something else.

THE COURT: I want to know how we are going to resolve it. I don't know what hearings are necessary yet.

Can we get the tapes in by Thursday?

MR. PUCCIO: We can get what we plan to offer into evidence by Thursday. Whether we can -- one further point, your HOnor, I am not sure if anything else is in existence. Maybe these other portions are no longer in existence.

MR.POLAKOFF: Then I object to all of them.

MR. FRUCHTMAN: How do you know if any of the originals are in existence?

MR. PUCCIO: None of the originals are in existence but the master made from the original that includes all the pertinent conversations are, and I assume are in existence. That is the tape I received and gave the defense counsel. It came from the master.

THE COURT: If the tapes are admissible, I can understand where portions of them would be admissible without having the whole tape. That I think they have to produce someone to explain why he didn't have the whole tape and what the methods were, and there should

be cross-examination --

MR. FRUCHTMAN: How can we determine if the master was made fromthe original and transcribed properly?

THE COURT: One is a question of admissibility and the other is a question of credibility. One is a question whether I let it in at all and the other is whether they should produce certain individuals to prove the reliability.

MR. POLAKOFF: May I address myself respectfully to the question of an adjournment? A short adjournment, but adjournment if necessary for counsel to investigate all the subjects.

I think if we do that we will save the Court's time during the trial and our time too.

My client is now in Eleventh Street, and I requested your Honor to send him from Hempstead to Eleventh Street --

THE COURT: Eleventh Street?

MR. PUCCIO: It must be West Street.

MR. POLAKOFF: Yes, it is Eleventh and West. We sometimes refer to it as Eleventh Street.

He was transferred for my convenience because the marshal found it burdensome to bring him down.

MR. PUCCIO: That is so. The marshal was not

able to handle that detail although we suggested he be kept in a secure location.

MR. POLAKOFF: They have defendants convicted and serving substantial time, and the Government didn't seem to be worried about that.

THE COURT: It is just a transfer point, they are not kept there to serve a sentence.

MR. POLAKOFF: I said they are there for some substantial time, but there are people who are awaiting appeal and who have been convicted. I work hard but it is impossible to prepare this case.

What do you have on Eleventh Street? I went there today to acquaint my defendant with the conversations on the tapes.

I had to wait for him. When he came down there were four cubicles and maybe they were five feet by five feet, and they were all occupied and there were six other lawyers waiting their turn. I had to wait. Again, I request a reasonable adjournment. I want to try this case. I want to get rid of it. I don't like to have cases pending. I get rid of it and that is fine.

Secondly, I think my client is entitled to bail. When I argued bail before your Honor before, you gave me two arguments, one that he fought extradition in Canada.

R3

Well, I respectfully submit, your HOnor, if I had a client in New York who was to be extradited to Mexico or Canada and I thought that the offense was not extraditable, I would fight as a matter of right and as a matter of law the extradition.

I don't expect anyone to hold that against my client.

THE COURT: I am not holding it against your client.

MR. POLAKOFF: I got thatimpression. I have the minutes and your argument was he fought extradition.

THE COURT: I indicated an unwillingness to come to trial.

MR. POLAKOFF: Who wouldn't have an unwillingness?

THE COURT: It also indicates an inclination to avoid trial.

MR.POLAKOFF: If you can do it legally, why not.

THE COURT: I don't think that the client draws that fine a line.

MR. POLAKOFF: Do you think I or any other American charged with a crime in Mexico would care to go there voluntarily even though innocent or he felt he was?

THE COURT: I know a few who would go to the United States Supreme Court and take one year to prevent it.

MR. POLAKOFF: I agree.

The second argument your Honor gave me is that he would flee or could flee. The fact he has a home and wife and six children -- your Honor intimated he could go to Peru or Argentina or stay there until Catania disappeared.

If he was out on bail and disappeared the same thing would happen, he would be tried in absentia and get a bigger sentence.

MR. PUCCIO: That is not so.

MR. POLAKOFF: Also he would have the offense of fleeing.

THE COURT: What is that compared to the narcotics charge? Mr. Puccio has the answer, we couldnt try him in absentia because we have to start the trial. If he voluntarily absented himself then we can continue.

MR. POLAKOFF: Your Honor, it is difficult to prepare a case of this magnitude --

THE COURT: You have only given two of the reasons I set forth.

MR. POLAKOFF: The other reason, he has no record or --

THE COURT: He is reputed to be the biggest narcotics dealer.

MR. POLAKOFF: I dispute that.

THE COURT: Of course you do.

MR. POLAKOFF: Your Honor, there is not one sentilla of evidence present outside of a mere contention of Mr. Puccio. If he was the biggest or one of the biggest in Canada he would have been arrested and prosecuted.

THE COURT: How about the wire tap? I could use them for bail purposes. How do you avoid that? You say there is no evidence? Mr. PUccio says the wire-taps indicate nine sales of heroin.

MR. POLAKOFF: That is thecharge of this indictment. Assuming -- now assume he is guilty or the wire-taps are legitimate, --

THE COURT: No, for these purposes I will assume they are illegal, inadmissible, what has that got to do with bail?

Here is a man dealing in narcotics --

MR. POLAKOFF: Other people in narcotics have gotten bail.

THE COURT: Sure, and they have taken flight.

MR. POLAKOFF: One.

THE COURT: One here. Inmy experience there has

been any number. In my experience --

MR. POLAKOFF: You believe a man charged with a narcotics violation is not entitled to bail at all?

THE COURT: I never said that and you will never get me to say that.

MR. POLAKOFF: You say reputed. What evidence do we have other than this case? And this is the first time -- he was last convicted in 1960, only once, for possession of firearm.

THE COURT: Do you want to recite everything once more?

MR. PUCCIO: There are many reasons, he is not a United States citizen and he has no roots in the United States. He is one of the biggest -- reputed to be -- I have substantial evidence from the Royal Canadian Mounted Police and Quebec provincial police and FBI of the United States and every law enforcement agency involved with his activities, I have considerable evidence he is one of the biggest rackateers and he is in effect the Carlo Gambino of Canada.

THE COURT: What is his racket?

MR. PUCCIO: In addition to narcotics, many other things.

MR. POLAKOFF: Gambling, that is what the wiretaps are on. I say if that is true, certainly the

American Government, Canadian Government, would have some evidence against him. He would have been convicted of some crime. Fourteen years have gone by without a conviction.

MR. PUCCIO: You can be sure they have been trying for fourteen years.

MR. POLAKOFF: The Canadians, if they wanted, they could have prosecuted him but they couldn't --

THE COURT: Maybe he will be.

MR. PUCCIO: The narcotics was delivered to the United States and sold in the United States, not in Canada.

MR. POLAKOFF: I question the jurisdiction of the Eastern District of New York. The narcotics were delivered in Manhattan. True they passed through the Eastern District because Catania took a flight from Dallas.

THE COURT: Mr. POlakoff, I would gladly give it up to the Southern District but unfortunately we have jurisdiction. All you need --

MR. POLAKOFF: The sale was made in Manhattan.

THE COURT: Allyou need is any overt act.

MR. POLAKOFF: There is no overt act against Catroni stated in the indictment.

THE COURT: It doesn't have to be.

MR. POLAKOFF: I know that, but I am talking factually.

MR. PUCCIO: There is an overt act against Catroni in the indictment.

MR. POLAKOFF: Which one?

MR. PUCCIO: If I remember correctly, one of the overt acts alleges a meeting in a restaurant in Montreal. It is not contended that Catroni came to the Unted States at all in connection with this offense. In fact, we don't have any evidence he was in the United States in connection with this.

MR. POLAKOFF: That is correct.

MR. PUCCIO: The theory of our case is others acted at his behest.

THE COURT: What over act do you say took place in the district?

MR.POLAKOFF: A landing at Kennedy. The air ship landed at Kennedy and came from Kennedy to the Southern District.

THE COURT: With the cocaine?

MR. POLAKOFF: Only in transit.

THE COURT: That is enough. That's how we get jurisdiction out of most of the conspiracies. I have had occasion where everything except the importation occurred outside the jurisdiction, and our U.S.

Attorney took jurisdiction.

MR. POLAKOFF: This is a case like it.

THE COURT: Nothing unusual about it.

MR. PUCCIO: There was a Second Circuit case --

THE COURT: United States against Vega, everything happened in Manhattan.

MR. PUCCIO: There was one specific case on all fours with this case, it involved a trip to Kennedy airport, the Second Circuit said this one trip was more than sufficient.

THE COURT: That is enough. There is also the aiding and abetting count in the nine kilos here. There is no sense arguing jurisdiction.

MR. POLAKOFF: I just wanted to raise it so I don't waive it. You never can tell.

THE COURT: It's on the record, you never can tell.

MR. POLAKOFF: How about the adjournment?

THE COURT: The only thing that bothers me is resolving the wiretaps. If the wiretap is resolved there isno reason you can't go to trial on the 18th.

Now you want to talk about bail. You started off at $50,000, 5,000 cash. You went up to a quarter of a million --

MR. POLAKOFF: When I said $50,000 I meant

$50,000 cash.

THE COURT: Here is a fellow, relatively a minor actor, who flew the coop with $100,000. It's all collateralized and the bonding company called me on the co-defendant who has $200,000 and they said they are nervous about it and want to get off the risk.

That is the fact of life.

MR. POLAKOFF: Then I suppose according --

THE COURT: This is one of the highest risks I have had, Mr. Catroni.

MR. POLAKOFF: I don't know what your HOnor bases that on.

THE COURT: I think he's got plenty of money and plenty of places to go.

MR. POLAKOFF: I wish I knew he had plenty of money.

THE COURT: That is one way of getting it. If he puts enough up in cash you know your fee is there.

MR. POLAKOFF: You think he will run?

THE COURT: It has to be high enough. It has to be in a sum that it isn't worth it to --

MR. POLAKOFF: I think it is exorbitant now.

THE COURT: I would like to make it more convenient to interview him, that is all.

MR. PUCCIO: I should point out that the Royal

Canadian Police indicated to me that Mr. Catroni, based on their intelligence information and investigations of him for several years, he could make substantially more bail than your Honor has posted.

Thatis the information they supplied.

THE COURT: There are very few cases where it happens. There was one where somebody dropped a million dollars and didn't come back.

That was strange, after he took flight he died in Israel or on his way. I think it was an espionage case.

MR. POLAKOFF: Well, that is different. Espionage is different.

THE COURT: Our experience with narcotics defendants is terrible and we don't know what is enough to hold them. That is the truth.

MR. POLAKOFF: I know this. I haven't had a narcotics case recently, as I told your Honor in over twelve or fifteen years. But what I knew, I have never heard of such a bail.

THE COURT: Nine kilos of heroin?

MR. POLAKOFF: That is a $100,000 tops.

THE COURT: No.

MR. POLAKOFF: Thatis the price they are talking about here.

THE COURT: $100,000?

MR. POLAKOFF: Yes.

THE COURT: That is one sale.

MR. POLAKOFF: That's what the Government says here.

THE COURT: Mr. Polakoff, I had a Mr. Matteo who was shot five times face downand they took him for dead. Next to him was an attache case where there just happened to be $300,000 in cash in there. He disowned it and said he never saw it before.

MR. POLAKOFF: Wasn't there another case where there was a million dollars?

MR. PUCCIO: Yes.

THE COURT: Big dealers deal in big money. As I say, the Government doesn't have to prove its case beyond a reasonable doubt for bail. If the Government makes a good faith representation, with something to back it up, and if this defendant is as big a dealer they believe him to be or say him to be, he deals in a million dollars' worth a month.

MR. POLAKOFF: Where is it?

THE COURT: He doesn't show it to his lawyer.

MR. POLAKOFF: Whereis the evidence of that? He couldn't get away with that.

THE COURT: They may prove it at the trial, I

don't know.

MR. POLAKOFF: I don't think they will.

THE COURT: There is nothing unusual about the Government coming in here with big dealers proving 78 kilos or 100 kilos, --

MR. POLAKOFF: You're a witness at 82 kilos, the main witness.

MR. PUCCIO: He is not on bail either.

MR. POLAKOFF: Where is he living? Not in jail. We will come to that later.

THE COURT: I think the case should be tried. I think that is the answer. I want you to be properly prepared and I don't know why you need an adjournment.

MR. POLAKOFF: Look what is happening, I just want a couple of weeks to get ready.

THE COURT: I don't know what that means, because you don't tell me what you need.

First of all, you originally told me you had to go to Mexico.

MR. POLAKOFF: Yes, I am still having that explored. If your Honor wants me to tell you, it involves transactions not dealing with narcotics not dealing with a crime, it's with a very vital witness. It's true, somebody -- your Honor, I can't go there. I can't send anyone there.

The people won't know who I am. I've got to get somebody who knows the people.

THE COURT: Who's going, Catroni?

MR. POLAKOFF: No, somebody from Canada. But I've got to get a time convenient to them. They may not go with me. How can I go and still prepare the case? This defendant was arraigned on October 31, and I got into the case and you put a trial date on for October 18th. And especially where he is not available to me, the time I have to spend to go to the jail to interview him and to find out who the possible witnesses could be, and you have asked me whether I prepared anything, I haven't had a chance. I have done some research but it is all in spasms.

MR. PUCCIO: I ask we be informed as to thetype of evidence the defense is trying to obtain in Mexico.

MR. POLAKOFF: I dont have to tell you.

MR. PUCCIO: If you are moving for an adjournment --

THE COURT: They may be able to produce it.

MR. PUCCIO: When they stipulate to it, I don't know.

THE COURT: Or they may stipulate to it.

MR. POLAKOFF: Stipulating to it and bringing a witness has two different --

THE COURT: Why don't you call thewitness and see --

MR. POLAKOFF: Catroni can't call.

THE COURT: He can't?

MR. POLAKOFF: He is in jail.

THE COURT: I will give him the right to make any long distance calls, there is no question about that. There is no problem there.

My problem is resolving the issue of the telephone taps. I want to know on what theory -- you just come before the Jury and say these were tapes, this is the system and I offer them in evidence?

MR. PUCCIO: Other than relevancy --

THE COURT: Other than relevancy, in other words--

MR. PUCCIO: What makes them admissible?

THE COURT: I have always felt that it is the person who heard the admissions that gives the testimony. That is the testimony of what happened.

MR. PUCCIO: Normally in a telephone tap situation, the person who conducted -- even if he is listening, the person who makes the recording does not testify to what he remembers, he just plays the tape.

That is the way it was introduced in the Stepenberg case.

THE COURT: Normally he says "I heard the conversation, and this is the conversation." He adopts it.

MR. PUCCIO: I think there are situations where police officers who have experience in narcotics testified to the meeting of certain recurring code words for narcotics.

THE COURT: In addition to that --

MR. PUCCIO: One of our assistants is checking it out on our computer now.

THE COURT: I want the case given to the other side. The other problem is what you are ready to produce inthe master tapes, whether you can bring someone down before the trial, --

MR. PUCCIO: We will bring the master tape and the people who made it down to the trial.

What I gave them would be secondary evidence. I gave copies of the master tape. That's all I have.

For the trial, we will bring down the master tape itself.

THE COURT: Well, I would like it before the trial so we know what we are talking about.

This could go on for hours.

MR. PUCCIO: I played -- I had someone else play for the defense attorneys, an agent, and the defendants

the entire group of recordings we seek to introduce. It only took an hour and fifteen minutes.

THE COURT: What they are saying is they want to hear the whole recording. They want to decide whether it's relevant. They want to know whether anything on the tape modifies what was said.

MR. PUCCIO: If that is available to us, I will make it available to the defendants.

THE COURT: If it is not available youhad better submit cases on whatever is available.

MR. PUCCIO: I will do that.

I will first try to see if it is available.

THE COURT: Can you bring it in by Thursday? I am hoping that the case on trial will finish on Wednesday.

MR. PUCCIO: I am going to try to have it here by Thursday. We arenot dealing with our own people, we are dealing with a foreign government.

MR. POLAKOFF: Under the circumstances, may we have a two week adjournment and during that time we can clear up all these problems and your Honor will then be in a better position to rule.

THE COURT: I may be in a position to rule on Thursday. I don't know what the issues are. The issues may be simple. I don't know what the issues are.

How long will this case take to try, Mr. Puccio?

MR. PUCCIO: I would think it would have to take over a week. Let me just add, as far as the defendant Oddo is concerned, it may be that theGovernment will consent to a severance.

That would shorten the trial a little bit. I would say possible two weeks.

MR. POLAKOFF: We have another problem. From what I read, I think Catania can speak English. Probably as well as my client could understand English. If Catania speaks Spanish, my client doesn't know Spanish. Would it be translated into French and then into English?

I think that Catania should speak in English. I think when he was debriefed he was in English. I am convinced he could speak English.

MR. PUCCIO: He was debriefed in Spanish.

THE COURT: I have this argument from lawyers and I had one as recently as an hour and a half ago by a lawyer that insisted that the Spanish-speaking witness testified in English. I have this policy, where someone is bilingual and feels more comfortable in his native language, I won't insist he answer questions on direct examination in English. He may not give the right answer. Now, there are degrees of familiarity

with the language. I will leave that up to him on direct. If on cross-examination a lawyer wants to cross-examine in English, I will insist that the witness do his best to answer.

Then the Jury has gotten the idea and then the Jury can pretty well tell whether he is lying or whether it is just a matter of unfamiliarity with the language.

MR. POLAKOFF: How are we going to work it?

How is it going to be translated? He talks Italian, maybe my client knows it. Thatwill save one translation.

THE COURT: Mr. POlakoff, again, on the trial, I don't know about outside the trial but on the trial I will ask the witness what language he feels most comfortable in, which he can express himself best in. That is the language he is going to speak in.

MR. POLAKOFF: How about the interpretation?

THE COURT: We have interpretors.

MR. POLAKOFF: We need two.

THE COURT: Suppose the questions are asked in Spanish?

MR. POLAKOFF: My client is not well versed in English.

THE COURT: That interpreter will translate from Spanish to Italian. We won't translate the English into

the Spanish.

MR. PUCCIO: It might be easier to translate the English into Italian.

THE COURT: There won't be time for that, it means two translations.

ls MR. POLAKOFF: How is my client going to hear what is said? He is going to have an interpreter sitting next to him?

THE COURT: Certainly.

MR. POLAKOFF: He told me while you and I were having a discussion and the interpreter was buzzing in his ear he missed the whole thing.

MR. PUCCIO: We will use our interpreters. I wouldn't want them to use our full-time interpreters, but let them get their own.

MR. POLAKOFF: I don't know of any interpreters. The difficulty there -- well, all right.

MR. FRUCHTMAN: Judge, may I make a statement? I am on trial now before Judge Sullivan in the Bronx Supreme Court. I advised the Cout at the time that I had this scheduled trial. We hope that trial will be finished. I represent Oddo. If he is going to be severed I don't have any problem.

THE COURT: Why hold this hanging if we are going to trial on the 18th? Oddo won't be ready.

MR.PUCCIO: I would prefer to -- I spoke to Dr. Cassella after I received your Honor's letter and he verified and repeated theinformation. He pointed out he is not a cardiologist and invited me to check with a cardiologist on this.

We don't like to try these cases many times, I will move to sever right before the trial. I understand although the case is set for the 18th and the Government would like to try the case onthe 18th, Mr. Polskoff has spoken to me at the last appearance and said he needs mor e time and wants an adjournment.

MR. Klar indicated on Saturday when he picked up the material he had certain depositions that he was going to request. It looks to me like the case is going to go on the 18th. I would rather sever at that time if I can.

In the event --

THE COURT: I don't know if it is going on on the 18th.

MR. PUCCIO: If there is some reason for an adjournment, Mr. Oddo may recover.

MR. FRUCHTMAN: Your Honor, I must go away for health reasons on December 12th.

MR. PUCCIO: He can get another lawyer.

THE COURT: For how long?

MR. FRUCHTMAN: I will be gone until January 3rd, because of the Christmas holiday.

THE COURT: You are not asking for a two week adjournment.

MR. FRUCHTMAN: If he severs there isno problem. If you remember the last time this case was on, back quite awhile, we were ready at the time and your Honor adjourned it because Mr. Catania was going to be extradited from Canada.

Catroni, I'm sorry. In the interim, Mr. Oddo got ill.

MR. PUCCIO: Possibly I could give more of a firm answer later on in the week. I would like to see -- not that I don't trust Dr. Cassella, but sometimes the opinions of doctors in an institution who see the inmates on a regular basis differs from an expert --

MR. FRUCHTMAN: With a 90% blockage of the heart--

MR. PUCCIO: Even onthe tapes Mr. Oddo says 1971 he wasn't feeling too good. I would like a little bit longer to check it out.

THECOURT: I will try to squeeze this in. Is Dasti at West Street?

MR. KLAR: With respect to Mr. Dasti, there are certain people I would like to see. We thought several

of them would be coming into New York. They have not come in. I would like to go to Montreal. It may take a day or day and a half to convince people to come down and testify. I have been assigned and my client has no money. I would respectfully ask the Court to pay my expenses to and from Montreal for the day or day and a half to interview the people and convince them tocome down here. I would like to go Wednesday.

MR. PUCCIO: I won't be going with you.

MR. KLAR: It won't be necessary for Mr. PUccio to go at that time.

THE COURT: Of course, this is part of preparation. You are going to do this yourself and you are not hiring anybody?

MR. KLAR: I am going to do it myself.

MR. PUCCIO: I would only make the suggestion in the event I am able to get the master tape from Canada and it is here on Thursday for review that everybody --

THE COURT: The more we talk the more I am convinced we can't get ready for the 18th. I don't know how long the hearing would take on the tapes because I don't know what the tapes are.

MR. PUCCIO: I have transcripts which I filed with the Clerk of the Court of the five that are in

English, -- in French, and the rest I will file tomorrow.

THE COURT? I am not concerned with what you gave, I am concerned with what you didn't give.

MR. PUCCIO: I have an agent in Canada today who is picking up the additional conversations which I am going to pick up tomorrow. I asked him in anticipation of this -- Mr. Klar mentioned it to me, to find if there are any other tapes in existence. I know the only thing would be the master tape. I could report about that hopefully tomorrow. I just don't know how long they are. It could be very long, it could run for days.

THE COURT: That's what I mean.

MR. PUCCIO: Well, I don't know.

THE COURT: I think I ought to have a hearing this Thursday in the early afternoon. Let's say 1:00 o'clock. That would give us the afternoon and I would direct you to bring in the individual who knows how the tapes were made, the police officer who gave authority or can show that authority was given.

What happens to the Government s case if they don't use the tapes?

MR. PUCCIO: It is a ticklish situation. My opinion is we should use the tapes. We have a prima

facie case without the tapes and we had a testimony of Catania, but this is a case we do want to offer the tapes.

And we consider them to be very important.

THE COURT: Mr. Fruchtman, you will be on trial Thursday?

MR. FRUCHTMAN: That is correct, your Honor.

THE COURT: Of course, you have Mr. Rosenthal.

MR. FRUCHTMAN: I know he is on trial before Judge Friedman. If he is finished I can have him in. Mr. Puccio can let me know by Thursday if he is going to sever.

MR. PUCCIO: I --

THE COURT: Doyou have any commitments in December?

MR. KLAR: December 8th to the 16th, I will be out of town on vacation.

MR. POLAKOFF: I have no committments.

THE COURT: It means that I can't give a two week adjournment because nobody else is available. If Mr. Fruchtman is still in the case he can't make it. Mr. Klar can't make it.

MR. KLAR: December to the 16th, I will be out of town.

THE COURT: There is the problem.

MR. POLAKOFF: I only want enough time to feel that I am adequately prepared.

THE COURT: Mr. POlakoff, I wish I could give you enough time so that you feel that.

MR. POLAKOFF: That's what I said.

THE COURT: There are some lawyers, and sometimes they are the best lawyers, that never feel that they did everything possible.

MR. POLAKOFF: That is true. You never feel you did everything in Court. But in view of the magnitude of the paraphernalia, to get it, read it, and look up cases, two weeks is rediculous.

THE COURT: Mr. Puccio will give you United States against Toscanino. He will give you a copy of the slip opinion. I don't think it is published yet.

MR. POLAKOFF: Would you mail it to me tonight?

THE COURT: Yes. Judge Sullivan wrote an opinion and that was inthe newspapers where he indicates it is a question that could be looked at, and he was joined by Judge Timbers.

I don't know if that is the gentleman you are looking for.

MR. KLAR: No, he is from my office.

Can we ask for the hearing that any Government

official, enforcement officer, that has anything to do with the gathering of the evidence and as a result of that evidence may have participated in putting the dates together be present?

MR. PUCCIO: The agent in Montreal is Kevin Gallagher. He is now assigned to the Paris office of DEA and he will be here for the trial. I suppose if it is absolutely necessary I could call and have him here Thursday. I thought it wouldn't be necessary until it was decided whether it is lawful --

THE COURT: Obviously, your representation as to what he will testify to-- well, I'll wait until the trial.

MR. PUCCIO: I can find that out on the phone and put it on the record on Thursday. Provided I can set it up for Thursday.

I would have to --

THE COURT: How and why originals are destroyed? And how they are put on the master tape. Whether they can be manipulated, and I want the gentleman who is in charge of all that.

MR. PUCCIO: I can produce him. Your Honor wants the master. I don't know if I can produce the master by Thursday.

THE COURT: I want somebody to tell me why not if not. If it is a matter of policy that they won't give it up, all right, put it on the record.

MR. PUCCIO: I may be able to produce it but not by Thursday. In other words, this is the first case where the Canadian Government has actually given evidence to the United States Government for use in the United States. It is not an every day occurrence and it took me quite a while to get them.

I don't know if they will automatically release the other tapes without some -- I might have to go through the State Department.

THE COURT: Will you cite some cases to me?

I dont need a memorandum, give me the cases that say that the tapes can be introduced into evidence without testimony of the parties to the conversations. You mean without the testimony of someone who listened to the voices as they were being recorded?

THE COURT: Yes.

MR. PUCCIO: For instance, the testimony of Catania would --

THE COURT: Who tried the Mauro case? That was an extortion credit case. I think it was just argued. I did research on it and I cited a number of cases which escapes me now. We just used it the other day.

I wanted to check on the admissibility of the transcript.

MR. PUCCIO: I would ask, and I would bring it up -- I have given my translations of the French which was done by the Quebec provincial police and I'm going to give transcripts of it. I would ask if there's any objection before the trial --

MR. POLAKOFF: All this in three days? We are going to be here Thursday, we have to get somebody to listen to the voices. It's very difficult.

I will do the best I can of course.

THE COURT: If it gets very tight and you make out a case for it, I will pick the Jury on Monday and the case can go over to Wednesday.

MR. POLAKOFF: You promised the first time that the case would go over to the 25th.

THE COURT: The trouble is --

MR. FRUCHTMAN: Youhave Thanksgiving coming in. If this case is going to take a week and a half and you have the testimony thatyou say you have, and Mr. Klar gets witnesses, this case is a two, two and a half week case. This case will not be finished by December 8th, when Mr. Klar has a commitment.

MR. POLAKOFF: Your Honor, with interpreters the case takes twice as long as it would ordinarily.

THE COURT: We may have a three week case.here. That is the point.

MR. POLAKOFF: If we let it go to January we will havethe whole month in leisure and comfort for your Honor and ourselves. January 3rd. The first day after the holiday we can devote the whole month and not be pressed. Everybody will be ready then. We won't have all the side problems.

MR. PUCCIO: Your Honor, I am --

THE COURT: I know that the reporter would like to get home. It's almost 6:00 o'clock.

MR. PUCCIO: Your Honor, in the Bynum case, which was a prosecution in the Southern District --

THE COURT: Judge Travia had a minimization hearing here if I recall.

MR. PUCCIO: That is correct.

THE COURT: Yes.

MR. PUCCIO: I believe John Mitchell testified in the Southern District in the same matter.

THE COURT: That's right.

MR. PUCCIO: In the Bynum case on page 408, this is 360 F.2d, 408, they defined intercept as:

"A term defined by the Act as the aural acquisition of the contents of wire or oral communication

through the use of any electronic, mechanical, or other device. This definition clearly equates interception with the listening to, monitoring, or hearing of described communications, either at the time such communications occur or at a subsequent time through the use of electronic means, such as a playback tape recorder.

Recording a communication which has not been heard by Government agents and storing that recording so that it will not be heard, unless demanded by the party involved in the conversation, does not constitute an interception under the terms of theact."

THE COURT: How does that help us?

MR. PUCCIO: It is precisely the situation where an agent isn't monitoring a tape recording --

THE COURT: What has that got to do with admissibility?

MR. PUCCIO: I haven't read the case.

THE COURT: Read the case.

Think about it. They were just defining interception. I think that the act itself defines what interception was.

MR. PUCCIO: I haven't had a chance to look at it. I think what they are saying is it is all right if you minimize after the fact as long as you have a machine that is by itself and you minimize after

the -- A 414

THE COURT: The defendants are not arguing minimization. They are not saying you violated the minimization requirements. They are saying they want to find out everything you have on tape.

MR. PUCCIO: I thoughtthis was on the issue of whether or not a tape recording made on a recorder operated but not monitored could not be offered in evidence.

MR. FRUCHTMAN: That doesn't say that.

MR. PUCCIO: As far as --

THE COURT: I don't think it says that.

MR. FRUCHTMAN: It doesn't.

THE COURT: I will have to reread it.

MR. FRUCHTMAN: There is a hearing before Judge POllack on it.

THE COURT: My suggestion is this, pick a Jury on the 18th. You show me you are not ready and need some more time I will go over to Wednesday. That would give us three days in that week, because I dont have motions. It will be Wednesday, Thursday, and Friday. Then we will go over to Monday. We willonly have three days that week. I will probably ask you to come in on Friday after Thanksgiving. I don't know whether you like working on Thanksgiving --

MR. POLAKOFF: I would like to spend the holiday with my children and grandchildren. Especially when I suggested to your Honor it could go over to January 3rd which will solve all the problems and everybody would be ready forthe case and we could go right ahead.

THE COURT: I've got a man in jail that is claiming he is in high bail. He should be tried.

MR. POLAKOFF: The man in jail number one wants his lawyer to be prepared. Number two, bail, you haven't granted bail. I don't contemplate at the present moment, your Honor, going to the Cout of Appeals on Appeal. I don't make that commitment, but that is my present inclination. Under those circumstances he would be the one to complain. When you order a case to trial in two weeks of this magnitude with all these problems, I think you are putting a pretty tough burden on a lawyer.

THE COURT: What do you say about that, Mr. Puccio?

MR. PUCCIO: Can I approach Mr. Polakoff for a second?

MR. POLAKOFF: Sure.

(Pause.)

MR. POLAKOFF: If there are any deposistions, assuming the case goes over to January 3rd, you will

be advised by the 20th.

MR. PUCCIO: November?

MR. POLAKOFF: November. You will have the whole month of December for who, what, when, and where.

MR. KLAR: That is correct, I have no objection. I renew my application that the expense be paid to me for going to Canada this week.

THE COURT: You are authorized to do that. I am not sure under what conditions. You see, I am trying to figure it out -- you get a maximum of $20. an hour. You probably get your travel expenses. Under our criminal justice act any special services must be authorized and it is only up to $300. Beyond that it must be certified by the chief judge of the circuit. But I feel this is part of the general services rendered by a lawyer. If you hired an investigator I couldn't pay more than $300. Judges get $40. a day and they have to show how they paid it out. The senators now arguing whether they should up it to $50. a day. How can I give a lawyer tow or three hundred dollars for interviewing witnesses?

I think you are entitled to your expenses and reasonable fee for the work you have done up there and services rendered. You are authorized to do it.

MR. KLAR: Thank you, your HOnor.

THE COURT: The same thing with an interpreter. You are entitled to interpreters.

MR. KLAR: I ask the Court for a copy of the minutes.

MR. PUCCIO: I am ordering a copy.

THE COURT: All right, furnish it.

MR. KLAR: Thank you.

MR. PUCCIO: This case is on the calendar this Thursday.

THE COURT: Is that all right?

If you have nothing let's not waste time. If you've got tapes or some witnesses --

MR. PUCCIO: All right.

THE COURT: THen fine.

MR. POLAKOFF: Your Honor, if he can't get it by Thursday we are not going to press him for time.

MR. PUCCIO: I would just as soon get it over with.

THE COURT: My time is pretty much taken up. Maybe I will haveto do it on a 24-hour notice in case my case breaks.

MR. POLAKOFF: I will try to accommodate .

MR. PUCCIO: I will get back to the Court and counsel about how much I can line up for Thursday.

THE COURT: Thank you.

MR. FRUCHTMAN: What is our situation about the trial of the case? What date is the trial?

THE COURT: Well, it may go over.

MR. FRUCHTMAN: I can understand that.

THE COURT: If it doesn't go over, why should we have to wait until the 18th to to --

MR. PUCCIO: I will reconsider as to this defendant.

THE COURT: This fellow is a sick man.

MR. PUCCIO: I think I should -- this is Monday I received this letter last week. If this goes over to January 3rd, I will assume this fellow will be on trial with them.

MR. FRUCHTMAN: We hope he is better. With his condition he may have to go in for open heart surgery.

THE COURT: That may depend on the lord above and the good medical practice.

MR. FRUCHTMAN: That is correct.

(An adjournment was taken at this time to Thursday, November 14, at 1:00 p.m.)

* * *

A 419

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U.S. DISTRICT COURT E.D. N.Y.
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TIME A.M.
P.M.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

-against- : 73-CR-898

FRANK COTRONI, et al :
Defendants

:

----------x

United States Court House
Brooklyn, New York

4:00 o'clock P.M.
November 14, 1974

B e f o r e :

HONORABLE JACOB MISHLER, U.S.D.J., CHIEF

CRIMINAL CAUSE
PRE-TRIAL CONFERENCE

ILENE GINSBERG
ACTING OFFICIAL COURT REPORTER

10

Appearances:

DAVID G. TRAVER, ESQ.,
United States Attorney for the
Eastern District of New York

BY: THOMAS PUCCIO, ESQ.,
Assistant United States Attorney

MOSES POLAKOFF, ESQ.,
For the Defendant Cotroni

MICHAEL KLAR, ESQ.,
For the Defendant Dasti

MAX FRUCHTMAN
BY: JERRY ROSENTHAL, ESQ.,
For the Defendant Oddo

* * *

THE COURT: Well, now, the case before us, U.S. v. Frank Cotroni.

MR. PUCCIO: I expect to call one, possibly two witnesses today, and I believe the defendants should be present. They were produced.

(Whereupon, the defendants entered the courtroom.)

THE COURT: I assume Mr. Oddo is unavoidably absent?

MR. ROSENTHAL: Yes. His condition remains as reported to your Honor.

MR. PUCCIO: My understanding is that we cannot move Mr. Oddo at this time so he cannot be present.

THE COURT: All right.

One of the purposes of this hearing is to understand how the recorders were made, and how they were preserved, and what we have to have offered, and how it resembles the original taping.

MR. PUCCIO: Yes. And I think also your Honor wanted me to present a witness who would give testimony concerning the authority under which the wiretapping was done in the Province of Quebec.

THE COURT: Yes.

Did you bring the master tapes?

MR. PUCCIO: Yes. And I think I ought to make a few statements by way of introduction, and before I get

into that, the testimony will be in English, although obviously the witnesses speak French as well.

I have Lybia Clancy in court today, a full-time Interpreter for the United States Attorney's office, and I would ask her to sit at defense table, if the defendants wish, and translate the testimony into French, but I would ask at future appearances that counsel provide their own Interpreters, because we don't wish to provide Mrs. Clancy for the defense in the future.

MR. KLAR: We intend to have our own Interpreters at the time of trial.

THE COURT: Do you want Mrs. Clancy to Interpret? Both defendants speak French, for example --

MR. POLAKOFF: One defendant speaks English well. The other speaks English fairly well, but I would rather have one defendant, Mr. Dasti, interpret for Mr. Cotroni, because otherwise when she talks to him, he loses the trend --

THE COURT: Well, also, your client might want to say something to you, and you wouldn't want the Government Interpreter to hear it.

Maybe you would rather do without an Interpreter.

MR. POLAKOFF: That's what I suggest.

MR. KLAR: Mr. Dasti will interpret for Mr. Cotroni.

THE COURT: And Mr. Cotroni speaks some English.

MR. POLAKOFF: A little, but we will get along better now with that arrangement than with an Interpreter.

THE COURT: So, you will do without the Interpreter.

MR. KLAR: Yes.

May the witnesses be excluded at this time?

MR. PUCCIO: All right.

THE COURT: Is there one witness who is in some supervisory capacity and will make for an orderly and proper offer of the proof?

MR. PUCCIO: Yes.

Mr. Patenaude will testify first.

THE COURT: The other gentleman can take a place in our witness room, or stand in the hall, or sit in one of the other courtrooms. Just tell us where you are so we will know where you are.

MR. PUCCIO: Would they be permitted to go up to my office?

THE COURT: Oh, surely.

(Whereupon, witnesses exited the courtroom.)

MR. POLAKOFF: Is Mr. Courture going to be a witness?

MR. KLAR: Do you have a Mr. Courture?

MR. PUCCIO: Yes.

MR. KLAR: He will be a witness.

MR. PUCCIO: Yes. He is right there with the checked jacket.

MR. KLAR: Okay.

MR. PUCCIO: Your Honor, we have supplied to the defense as of this date, copies of transcripts prepared from some of the tapes that we wish to offer in evidence.

I believe there were twenty-two conversations which I gave to the defense on a cassette. We prepared a transcript of five of those conversations, which was in French. That would be items 28 to 32 in the November 8, 1974, folder of Discovery Material.

Now, today, we will hand over -- It is being put together now -- transcripts of seventeen additional conversations. In other words, the remaining conversations on the cassette previously provided, which were in English, but we have made a transcript for the assistance of counsel and the jury. Those additional seventeen conversations will be provided.

The question came up last time we were here concerning other conversations that might have been overheard during the period of this Conspiracy, or more specifically, during December, 1970, and January, 1971.

After last week's appearance, I got in touch with

Mr. Patenaude's office, and they have brought down logs of all the conversations during this period.

Now, in some cases -- and the testimony will get into this -- the testimony, especially, I guess, of Mr. Courture -- in some cases we actually still have the tapes, but in other cases, there was no reason for them to be retained, and all we have is logs of the summaries of the conversations.

We will hand over sometime today the logs, five different wiretaps during that period.

THE COURT: What do the logs show? The time of the beginning of the tap?

MR. PUCCIO: The machinery is activated and turned off at a certain of time so the conversations were in an eight-hour period, but the logs are recorded, which give the contents of conversations other than the ones we are going to offer in evidence, and in many cases the conversations themselves exist, and can be listened to, and in other situations, the recordings no longer exist.

THE COURT: May I see the logs, or the typical logs?

MR. PUCCIO: Your Honor, these logs are in French.

Now, we will have these translated as soon as possible for the defense attorneys. Of course, the de-

fendants speak French.

In addition, in discussing the matter with Mr. Patenaude, we found that there are additional wiretaps, or projects, as they are called, which not only have irrelevant conversations, or conversations not related to this matter, but actually of relevant conversations which we didn't receive before, and some of which are in existence, and there will be actual tapes, and some which were not retained, but there will be summaries.

So, all this additional material we will provide, and hopefully in a short period of time.

I would point out now -- because I know it may come up -- that there are certain irrelevant conversations that don't pertain to this cocaine case which Mr. Patenaude's office, for reasons of security, et cetera, do not wish to hand over to the defense attorneys.

Again, I underscore the fact that they have nothing to with this case. There are maybe ten different conversations not related which we are handing up to the Court for an in camera inspection.

I do not waive any objection I may have to not handing this over, because I don't think any of this is producible, but I am willing to avoid extensive litigation -- and I have discussed this with Mr. Patenaude -- by handing over a voluminous amount of material to satisfy

the defense there are no exculpatory conversations, or conversations helpful to them.

As a matter of fact, going through the detailed inspections, I found highly incriminating matters which I wasn't aware of before, so the defense has spurred me on to greater heights, as it were.

THE COURT: That is always the way.

Now, I have some of the material you are willing to turn over; is that right?

MR. PUCCIO: We are willing to turn over the majority of irrelevant conversations in their log form, or if counsel feel it is absolutely necessary, they can, I assume, listen to them.

THE COURT: But the other classification is irrelevant conversations that you don't want to turn over, and you would be willing to submit them for in camera inspection.

MR. PUCCIO: That's right.

THE COURT: Are the authorities -- If I find they are not admissible, will they be re-produced and submitted to the Court of Appeals?

You see, the Court of Appeals has a right to review my determination if I deem them irrelevant. Would there be objection by Mr. Patenaude as to that?

MR. PUCCIO: May I confer for a moment?

(Pause.)

MR. PUCCIO: There is no problem with that, your Honor.

THE COURT: All right. Thank you.

MR. PUCCIO: Since I haven't handed over -- Your Honor, I have a couple of logs -- samples of logs, and these two logs will be handed over in their entirety.

THE COURT: Suppose you mark them, then.

THE CLERK: So marked as Government's Exhibits 1 and 2 for identification.

(So marked.)

MR. PUCCIO: Your Honor, each one of the wiretaps is referred to as a project by the Canadian Police, and there is some description -- Vegas Number 5, a tap on Mr. Catroni's phone, at 6649 Chauvin Mtl, phone 256-7978, which is Exhibit 1, and Exhibit 2 is Vegas 11, a wiretap on Mr. Cotroni's other phone, or another phone, at the same address, and the number is 256-9659.

This is all set forth in the material.

Your Honor, those are in French.

THE COURT: Oh.

MR. PUCCIO: But we will have them translated. I received them yesterday.

THE COURT: I thought it was something I could understand.

MR. PUCCIO: We will provide the Court with translations.

At this time, we call Mr. Patenaude, your Honor.

R2 fls

(continued on next page.)

H E R V E' P A T E N A U D E , having first been duly Sworn by the Clerk of the Court, took the witness stand and testified as follows:

THE CLERK: State your name, and spell it for the record, please.

THE WITNESS: Herve', H-e-r-v-e', Patenaude, P-a-t-e-n-a-u-d-e.

DIRECT EXAMINATION

BY MR. PUCCIO:

Q Mr. Patenaude, where do you presently reside?

A I presently reside in a town twenty miles south of Montreal, twenty miles south of Quebec.

Q What is your occupational position?

A I am Deputy Director General of the Quebec Police Force, Montreal, Quebec, Canada, and I am in charge of the Directorate of Security and Intelligence.

Q How long have you been so employed?

A I have been employed in this particular department since 1965.

Q How long have you been Director?

A I have been a Deputy Director --

Q Deputy Director -- I'm sorry --

A -- since the 1st of July, 1974.

Q Now, Mr. Patenaude, can you give us a description

of your particular department?

A The Directorate of Intelligence and Security in the Quebec Police Force comprises the following services: Subversive activity, physical surveillance units, criminal intelligence units of the Quebec Police Force, protective services for VIP's, and the scientific research services.

Q And would you be able to tell us approximately how many Officers or Agents you have under your direction at the present time?

A As of Friday last, I had 283 Officers in COS and constables under my command.

Q Now, during the course of your official duties, Mr. Patenaude, you have had occasion, of course, to become involved in criminal investigations; is that correct -- or investigations concerning violations of criminal law in Canada?

A Yes. I have had that occasion.

From 1963 until 1965, or the latter part of 1966, I was in Charge of the Criminal Investigations Bureau of the Quebec Police Force, subsequent to which I was sent to the Security and Intelligence Division.

Q I'd like to direct your attention, Mr. Patenaude, to the year 1970.

During 1970, did Police Officers under your direction engage in wiretapping?

A Yes, they did.

Q Are you familiar with the procedures that were in existence at that time concerning authorization for a wiretap?

A Prior to June 30, 1974, there were no laws prescribing wiretapping in Canada, and before June 30, 1974, having command of the Scientific Research Services, I was fully authorized by the Minister of Justice of the Province of Quebec -- I should say the Ministers of Justice -- of the Province of Quebec since 1965, and the Directors General of the Quebec Police Force -- one of them is since deceased -- the other one has retired -- the full authority to look into and authorize wiretapping by the Quebec Police Force under three major headings, Major Crimes.

Q Could you give us an example of some of the major crimes?

A Arson, Armed Robberies, Robberies with Violence, Auto Theft, Murders, et cetera.

Q Was Narcotics considered to be a major crime?

A Yes, it is considered a major crime.

Narcotics, Excise, all types of Morality Offenses, Gambling, Bookmaking, and to some extent Loansharking.

Apart from this, we were authorized to wiretap in dealing with Subversive Activity and Sedition, and finally,

wiretapping for offenses committed by or on groups of individuals suspected of being, or known to be connected with organized crime in the Province of Quebec.

Q Now, I take it, then, Mr. Patenaude, that during the year 1970, to be specific, if a member of your command wished to install a wiretap on a given telephone, he would have to receive authorization from you; is that correct?

A Yes, that's correct.

MP fls

(continued on next page.)

Q Would you tell us please what general criteria you used during the year 1970 in deciding to authorize the placing of a wiretap on a telephone?

A Before authorizing a wiretap, we had a number of conditions which had to be met.

First of all, it had to fall into three categories which I first related. Then the person requesting a wiretap had to come forth with some concrete information that the necessary methods of investigation had been exhausted; That it concerned a major crime; and also that other means of investigation would not likely bring forth the desired results.

Q If a member of your command came to you in a specific instance concerning a wiretap, would he normally familiarize you with whatever information he had indicating a certain individual was involved in a particular crime?

A That is quite so and we would go further in that if it was an ongoing investigation, we required a person requesting a wiretap to produce the reports on the investigations on the results of the investigations that he had previously carried out.

Only then, it was decided by myself that it fell within the particular categories which I have enumerated, would I then consent to the personnel hooking up the necessary services

to intercept the communication.

Q Any consent you gave would be pursuant to a verbal agreement that had been previously entered into?

MR. KLAR: That is objected to.

THE COURT: Sustained as to form.

Q Would you tell us if your authority to authorize wiretapping was in writing or verbal?

A My authority to wiretap was verbal. And this authority was granted to me by the Minister of Justice and the Director General of the Quebec police force many years ago. And it was renewed by the Minister of Justice or Attorney General as and when the necesary governmental change occurred.

THE COURT: Did they grand you that authority in writing or was that oral?

THE WITNESS: No, it was orally given.

And there was a mutual convention that was negotiated at that particular time and the Minister of Justice as well as the Director General of the Quebec Police Force and myself agreed to abide by the restrictions imposed upon us by the Minister.

If I may be permitted to do so, I would like to enumerate these restrictions. That no wiretaps whatsoever were to be carried out on any of the members of

the National Assembly of the Province of Quebec, the House of Commons in Ottawa, no members of Parliament or any of the memebers of the Canadian Senate.

The second restriction was no wiretaps whatsoever on the judges of the Courts of the province except in the case of the courts of a single justice of the peace.

The third restriction was no wiretaps on any person whose right to professional secrecy is recognized by the Criminal Code of Canada.

And finally, any person employed by the Government of the Province of Quebec with the rank of Deputy Minister.

Q Did you have this authority to authorize wiretaps during the years 1970 and 1971?

A Yes, I had this authority during those particular years and subsequent to this verbal authority, and following the enactment of the privacy act in Canada as of June 30, 1974, these conditions now form a part of a written designation by theAttorney General of the Province or the Minister of Justice.

THE COURT: How many wiretaps would you say you authorized during the period that you had that power?

THE WITNESS: As of possibly July, '65, until

30, 1974, I will venture a rough guess, possibly an average of 65 to 70 per year.

THE COURT: Were any of these wiretaps challenged in the Court?

THE WITNESS: There was no law at that particular time.

THE COURT: Did they challenge the admissibility of the evidence obtained in the Courts?

THE WITNESS: Yes, we had a very recent case on that type of documentary evidence in the Court of Montreal and his Honor justice Bisson rendered a judgement and admitted these tape which had been made prior to June 30th, under the same types of authorization as these being discussed presently.

THE COURT: Was that the only incident to your knowledge?

THE WITNESS: There may be others, and I also know many of these tapes were introduced and accepted by various commissions of inquiry inCanada.

THE COURT: I think you cited that case.

MR. PUCCIO: The cases that I cited involved Toronto, I believe.

THE COURT: Were involved --

MR. PUCCIO: Involved Toronto rather than Quebec.

THE COURT: I thought that judge's name seemed to be familiar.

THE WITNESS: It is a recent case, your HOnor. I regret I do not have a copy but I will supply it to the prosecutor.

Judge Bisson is the judge of the Superior Court inMontreal.

MR. PUCCIO: I believe I have that your Honor.

THE COURT: It looked familiar to me, or it sounded familiar to me.

MR. PUCCIO: Yes, I do have that. That has been given to the defense attorneys. I believe I didn't give them an English translation but I have one now and I will supply that case -- the translation that is.

BY MR. PUCCIO:

Q Now, Mr. Patenaude, the term project is often used to describe a wiretap conducted by your office, is that correct?

A Yes, it is. It is strictly an administrative process.

Q Administrative term?

A Yes.

Q These projects are very often given code names, is that right?

A That's right.

Q I would like to direct your attention to project Vegas 1B, Vegas TP, Vegas 3, 4, 5, 7, 8, 9, 11, 12.

Are you familiar with those particular designations?

A Yes, I authorized these projects.

Q Would you be able to tell us when you authorized each one of these various projects?

In other words, when you authorized the installation of the wiretap on each one of these telephones?

A I authorized project Vegas 1B from the 7th of July, 1970 to the 25th of March, 1971 for the Victorious Boarding Club, 837 Taschereau Boulevard, Ville Jacques Cartier on number 6779272.

At that same time I also authorized project Vegas PT which was a pay phone on the 7th of July, 1970, to carry on through the 23rd of June, 1971, for the Victorious Boarding Club, 837 Taschereau Boulevard, Ville Jacques Cartier, on telephone number 677-0378.

Q Mr. Patenaude, with respect to those two projects, Vegas 1B and Vegas PT, would you tell us first who the officer was in your command that requested these wiretaps?

A These wiretaps were requested by Mr. Bernard Courtiere, one of the members of the Quebec Police Force.

If I may, I would like to state to your Honor why these requests were made and why authorization was granted.

For a considerable number of years the Quebec Police Force, the Quebec Provincial Government, and various other persons in the province, had been receiving a terrific number of complaints by letter, verbally, and by telephone to the effect that, and this usually was from women, to the effect their husbands on a Friday night or Thursday night, stopped off at the Victorious Boarding Club and came home broke and squandered the weekly paycheck.

During the particular time, and as a result of receiving these letters of complaint, many types of investigations were carried out; various raids were carried out at the Victorious Boarding Club. The investigators endeavored to obtain statements of what was actually going on there at the Victorious Boarding Club but always to no avail.

We felt that the Quebec Police Force felt even after having carried out physical surveillances and exhausted their methods of investigation that there was no other way out but to try to get some evidence through wiretapping whereby we would try and control this gambling. This heavy gambling that was supposed to be going on there.

So on this basis, we installed these two taps and the result was that on the 17th and 19th of March, 1971,

a successful raid was directed on the premises and those responsible were charged and convicted in the Canadian Courts.

Subsequent to which this Victorious Boarding Club is now closed and for all intents and purposes hopefully wiped off the map.

Q Mr. Patenaude, let me direct your attention now and take you back prior to March of 1971, to project Vegas three.

Can you tell us, please, when that wiretap was installed and what criteria were used to authorize the wiretap on that particular location?

A As a result of the information obtained from these two wiretaps, it soon became quite evident there was much more than gambling going on on these premises and it was a concern of communication for various other offenses that fell into the categories that I previously described.

Q Would you be able to tell us some of the other offenses disclosed by these two initial wiretaps?

A Some of the other offenses, partially in the manipulation of stock, transactions concerning stolen property, narcotics -- narcotics, and from there also the existence of a considerable number of other gambling joints in and around the Montreal area.

Q Would you be able to tell us who the owner was

of the Victorious Boarding Club at the time the wiretaps were put in?

A As far as could be established, it was a gentleman by the name of Mr. Frank Dasti, residing at 4635 Clenraneld, apartment 418, who on the initial date was telephone number 488-0339, subsequently changed to 488-2470.

Q Now --

MR. KLAR: I move to strike the last part of the testimony with respect to Mr. Patenaude's opinion as far as he knows, as far as he learned that Frank Dasti was the owner of the Victorious Boarding Club.

THECOURT: Overruled.

Q Mr. Patenaude, would you fully describe for us Vegas 3, telling us the duration of the wiretap and the telephone number and the address and so forth?

A Vegas 3, was authorized and installed on the20th of October, 1970, and lasted until the 1st ofMarch, 1973, at 4635 Clenraneld Avenue, Apartment 418, Montreal, Quebec.

First on telephone number 488-0339, subsequently changed to 488-2470. And the reason for having authorized and installing this wiretap at the home of Mr.Dasti is that subsequent to the information obtained from project Vegas 1B and PT, some communications of importance in relation to the reason for the initial two taps was being carried out at that particular point.

Q Now, did you also authorize Vegas 4, 5, 7, 8, 9, 10, 11, and 12 subsequently?

A Yes, I also authorized these projects known as Vegas 4, 5, 7, 8, 9, 11 and 12.

Q With respect Vegas 4, will you fully describe that project for us telling us the duration of the wire tap and the number of the phone and location and the reason for your authorization?

A Project Vegas 4 was installed on the 22nd of October 1970 and ran until the 3rd of November 1970 at the home of Mr. Nicolas Di Iorio, at 430 Boulevard DX and Prairies, City of LaValle, telephone number 688-3847.

This project was also installed because of communications being made and received from various individuals having something to do or mentioned in communications to the three previous projects.

Q Would it be fair to state that the fourth project was based on information gleaned from the previous three?

A Yes.

Q Will you describe project 5, Vegas 5?

A Vegas 5 operated from the 2nd of November 1970 to the 24th of April 1971 at the home of Mr. Frank Cotroni, 6649 Chauvin Street, Montreal, on telephone number 256-7978,

and this tap was also installed as a result of information and intelligence developed from the analysis of what had been overheard on the four previous taps.

Q Would you direct your attention to Vegas number 7, and similarly explain to us or fully describe that project to us and tell us on what information your authorization was based so far as that was concerned?

A Project Vegas 7 was installed on the 11th of December 1970 to the 27th of September 1973 at a commercial establishment known as Le Salon Pierre.

Q What type of establishment is that?

A Barber shop. 17 St. Catherine Street in East Montreal. On telephone number 842-0483.

Project Vegas number 8 which was installed on the 11th of December 1970 and operated until the 13th of May, 1971 at La Salon Pierre, 17 St. Catherine Street, East Montreal on telephone number 849-3865. And these two taps were also installed as a result of information received and intelligence developed from the five previously mentioned taps.

Q I direct your attention to Project Vegas 9. Would you describe that wire tap or project for us and the reasons for your authorization in that case?

A Project Vegas 9 operated from the 10th of

December 1970 until the 24th of July 1972 at the home of Santo Mendolia, 6605 Fabre Street, Montreal on telephone number 274-1114.

This telephone tap was also authorized and installed as a result of intelligence generated from the analysis of the information gathered in all the previously mentioned taps.

Q Would you direct your attention, please, to Project Vegas 11, and tell us -- describe that project for us and tell us what criteria you used for your reason for installing that wire tap?

A Project Vegas number 11 operated from the 9th of November 1971 -- 9th of January 1971 to the 23rd of April 1971 at the home of Frank Cotroni, 6649 Chauvin Street, Montreal, telephone number 256-9659.

This telephone tap was authorized and installed also as a result of the intelligence generated through the analysis of the information received or intercepted on all the previously mentioned wire taps.

Q Lastly, would you describe Vegal 12 to us and explain the reason for your authorizing a wire tap in that case by members of your command?

A Project Vegas 12 was installed on the 10th of January 1971 and operated until the 16th of February 1971

at the home of Guido Orsini, 7155 Bordeaux, Montreal, telephone number 374-0449.

Q Would you be able to explain the reason for your authorization in this case?

A As of the 7th of July 1970, every workday morning and on weekends, I was made fully aware by my operational personnel of the information received as a result of the taps. And from the information, and providing it fell within the category for which the Quebec Police force was interested in wire tapping and only after having discussed, and fully analyzed the logs, and determining the possibility of further investigation and the gathering of further information, were these taps authorized.

If the information on the taps would not have generated sufficient information to warrant further explanation, no further taps would have been consented to.

Q These considerations came to play, I take it, in your authorization of Vegas 12 as well as the others you previously mentioned?

A Yes.

MR. PUCCIO: I have no further questions.

THE COURT: Mr. Polakoff, would you like to inquire?

CROSS-EXAMINATION

BY MR. POLAKOFF:

Q You said that you received oral communication or authorization from the Minister of Justice with reference to wire tapping, is that correct?

A Yes sir.

Q Was there any log, records of any kind, kept by anyone in the Government to verify that authorization?

A I don't believe so.

Q Could you tap the wire of the Minister of Justice?

A According to the convention I would have been seriously at fault if I had.

Q Who made the convention?

A The convention was reached as a result of analyzing the implications and the dangers of wire tapping by the Minister of Justice, Director General of the Quebec Police Force, and myself.

Q You set the rules, is that correct, that you three people set the rules?

A Insofar as the Quebec Police Force is concerned, because at that particular time and according to our terms of reference in the Quebec Police Force and the development process of our police force, it was then deemed quite logical that we benefit from all the technological and

scientific information available for the process of criminal investigation.

(Cont'd on next page.)

G:tr 3/1

Q And again, at the time when this convention was held -- by the way, what was the date?

A April. The most recent one was in April 1970. The previous one was in 1969 and the previous one was in 1965.

Q Who was present at these conventions?

A Well, they were not conventions, sir. They were meetings.

Q Who was present at these meetings?

A At the last one there was the Minister of Justice, Mr. Jerone Shiquette, Mr. St. Pierre, Director General of the Quebec Police Force and myself.

Q Any secretaries present?

A No, they were in the Minister's office.

Q Just the three of you?

A That's right.

Q And tell us who you were not allowed to tap.

A We were not allowed to tap any of the members of the National Assembly, that is, the Provincial Parliament, the House of Commons; the Federal Parliament and the Senate in Ottowa.

All judges in the province of Quebec, municipal provincial, superior, appeals -- all the justices in the courts of the privince and any person whose right to pro-

fessional secrecy is recognized by the criminal code including barresters and lawyers and so on.

Q Are you reading that from a memorandum or reciting that from memory?

A I am reading from a memorandum but I can tell, sir, that this convention, the previous convention, which had been agreed to verbally by the Minister of Justice, myself and the Director General, formed the basis of what is now the Quebec Police Force and the Department of Justice insofar as wire tapping these people are concerned.

Q YOu mean the new law prohibits wire tapping of these people?

A No, it doesn't sir. But if I may continue with your indulgence, before entering upon a wire tap project on the persons so described, we have to get the personal authority of the Minister of Justice.

Q You are talking of the present law?

A The present law.

Q I am talking under the old law.

A Under the old law that's what we have to do also.

Q Were you permitted to tap the wires of police officers like yourself and others?

A Certainly.

Q Therefore, you say that members of parliament --

A But before tapping a wire on a brother police officer in my own particular force I certainly would discuss the matter with my Director General.

Q So, you say that justices, members of parliament and Canadian Senate, all persons employed by the Province of Quebec were exempt from wire tapping prior to July of 1974?

A No. Pardon me, sir. I said not any person employed by -- in the Province of Quebec but they have to have the title of Deputy of Minister.

Q So, you had classes in Quebec -- ordinary people whose wires you could authorize to tap in this hierarchy who even you could not authorize to tap; is that right?

A No.

I think we will have to understand each other here, Mr. Polakoff.

According to my terms of reference and in the enforcement of all the laws of Canada there are certain things at the level of the police department that you can do but then, on the other hand, there was no stringent prohibition that a wire tap could not be performed on an

individual of the National Assembly but one of the pre-requisites of engaging in a wire tap was that the Minister of Justice wanted to be advised and to discuss the necessity and so and so forth, and then, as a result of whatever -- if the matter was serious enough -- he would more or less consent to it because he has to answer to the House for the action of the Minister.

Q As a matter of fact, wasn't it a violation of law to tap a wire?

A Prior to July 30 it was not in Canada except that under the Bell Telephone Act if anyone were to avail themselves of communications without making proper remittance to the telephone company he could have been accused as an offender either on fraud or for theft of communications but prior to June 30 and according to the research that has been made there was no law prohibiting wire tapping.

Q Didn't you have a bill of rights in Canada, in Quebec?

A It was a bill of rights in Canada but it didn't concern wire tapping.

Q Did it concern the right of the people to be safe in their persons and property?

A Mr. Polakoff I'd like to be able to answer you but I don't feel that I am sufficiently versed at this

time to discuss the proprieties of the bill of rights and all its implications.

Q Do you know of any case in the Quebec Province, the Province of Quebec involving wire tapping that was passed upon by a high court?

A Not that I recall at the present moment.

Q During all the years from 1965 to date --

MR. PUCCIO: I am going to object to further pursuing this. Mr. Patenaude is not here as an expert on the law of Canada.

THE COURT: I will take that into consideration but I will allow it.-- if he knows or does not know.

I might say if there is no higher court decision it is an indication it was never questioned.

MR. POLAKOFF: It was never offered in evidence.

THE COURT: Can you imagine with all these taps that the Government never offered it? Can you imagine that?

MR. POLAKOFF: I have been informed for whatever it is worth -- and we are going to ask permission to file a brief --

THE COURT: Oh, sure.

MR. POLAKOFF: From what I have been informed, no higher court has ever passed upon the authority of

wire taps.

THE COURT: To me, that is very significant in support of admissibility. It has never been questioned. That is why it was never reviewed.

Why do we have reviews in our higher courts? Because somebody tried to offer it and it was contested.

MR. POLAKOFF: Does your Honor feel in view of what your Honor said that if there was a conviction involving wire tapping that it didn't go to a higher court -- your Honor, the reverse is true.

THE COURT: No. I am saying that if the evidence went in and the conviction was based on wir taps it wasn't even considered a point to argue. It was just assumed that it was good. No?

MR. PUCCIO: That's the case for the most part, at least based upon Mr. Landry's opinion --

MR. POLAKOFF: Mr. Landry's opinion is worth no more or less than Mr. Puccio's --

MR. PUCCIO: I think my opinion is worth quite a bit too.

MR. POLAKOFF: He took care of the extradition proceedings on behalf of the Province of Quebec.

THE COURT: Let's get on with this. I think

these gentlemen want to get back to Canada or would you like to stay?

THE WITNESS: It may take considerable time but I am at the disposal of the Court, your Honor.

Q Do you like New York?

A Some parts of it, Mr. Polakoff.

Q Don't blame you. Some we don't like either.

Did you have anything to do with the preparation of the tapes?

A No, I did not, Mr. Polakoff.

My position is a position of my command of my subordinate personnel who are assigned to various functions or I should say were assigned to various functions during the periods which I have mentioned.

Q Do you know how the tapes were kept?

A The tapes are kept in a secure room within the Quebec Police Force Headquarters at 1701 Parthenais.

Q For how long a period are they preserved?

THE COURT: Are you talking about the original tapes?

MR. POLAKOFF: I think --

THE WITNESS: It all depends.

Q Depends upon whom?

A It all depends on the seriousness, the value,

the necessity and as a matter of fact, if you are speaking about original tapes, it also depends on how much financial resources you have available to exercise the continuance of your operations for a reasonable length of time because I am sure, as you well know, it is quite an expensive process.

THE COURT: Do you use resuable tapes?

THE WITNESS: Yes.

THE COURT: So, you tape one conversation and then use it in another conversation and the new one erases the old?

THE WITNESS: No. We rub them off before we put them on. I want to speak to this, Judge.

Up until June 30, 1974 -- because with the advent of the new Invasion of Privacy Act we have altered our method slightly to comply with the agency of the law but prior to June 30, 1974 at the conclusion of a project or operation or sometimes even during the project and the tapes proved to be useless or worthless we'd put on a tape eraser, run it through and make sure there is no other conversation on the tape and they reuse them again.

Q Who determines whether the tape is worthless or useless?

A This is determined subsequent to the analysis

of the information transcribed in those logs.

Q Now, from the original tapes they are transcribed to secondary tapes; is that right?

A Yes. The process is known as a dubb.

Q And how long are the dubbs kept?

A They may be kept indefinitely.

Q So, you would have all the dubbs --

A Or, according to our present method of operations which we are developing, these would be reviewed at the end of the conclusion of each project which is made by authorization.

Q I am not talking of the present.

A Talking about the past?

Q Yes.

A They can be dept indefinitely, Mr. Polakoff.

Q So, you have all the tapes?

A Not all of them. I'm sorry.

Q What happened to those you do not have?

A Our method of operations at that particular time was that due to the expense involved we would dubb those conversations which we felt subsequent to analysis were pertinent to the particular case or cases, as a matter of fact and to those that would fall within the category

which I have first stated.

Q Once you dubbed the tape you kept it, permanent; is that right?

A In the vault.

Q They are still there?

A Those that were kept are definitely there. There is no doubt about it.

Q Now, when you are going to use a tape that --

MR. POLAKOFF: Withdrawn.

Q When you used a tape in evidence in Canada -- and I wish you'd give me one case -- was the defendant entitled to the entire tape?

A In the recent case that was cited on which his Honor Justice Bisson was sitting, the defense was given a transcript of the log and if I recollect properly, defense counsel were permitted to hear the tapes.

Q What do the logs consist of? We haven't seen them but I wish you would tell us what they consist of.

A The recent law --

Q The logs that you kept prior to July 1974.

A Oh, you are talking about the logs?

Q Yes.

A Oh. I understood "laws".

Q I beg your pardon.

A The logs that we kept consisted of -- well, if we referred to the timeframe of December 1, 1972 to January 31, 1971, the logs reflect the conversations or synopsis, a fairly clear and concise synopsis of the conversations intercepted on these projects which I have previously mentioned.

(Cont'd on next page.)

Q Who makes the synopsis?

A The synopsis is made by the analysist and the person that does the audio portion of the tape.

Q Were all the tapes decipherable?

A All the ones that were on these taps were.

Q Clearly you could hear them?

A I would say that the quality was quite satisfactory.

Q Did you listen to them?

A Some of them I did -- Quite a few.

Q Did you listen to the tapes involved that you just told us about -- Vegas?

A Some of these conversations -- you see, Mr. Polakoff, as a result of these daily meetings we used to have, when I would read the log and found an item of consequence or was in relation to some particularly very important matter I would very often refer to the tape and hear it myself to make good and sure that the conversations or the content of the synopsis was in its proper context and this was a method of quality control and this is -- As a result of these daily meetings -- this is why we got involved or we continued -- that is, that I continued to authorize projects.

Q How many recording machines did you have in '71 -- the latter part of '70 and the early part of '71?

A I would like to limit myself to over 50.

Q And those were automatic machines; is that right?

A Yes, fully automatic, unless circumstances prevented us from performing an automatic operation.

Q An automatic operation means when the receiver was lifted the tape went on?

A Yes. But of course, that also depends on the type of equipment that you use.

Q Well, what equipment did you use?

A An electromagnetic electronic device.

You may also use an ordinary line transmitter, a physical direct wiretap.

Q Did you tap direct wires?

A We very seldom do this.

Q Where would you put the tap?

A Directly on the phone.

Q Was that a violation?

A No, it was not.

Q Weren't you interferring with property?

A No, we were not.

MR. POLAKOFF: No further questions.

THE COURT: Mr. Klar, do you have any questions?

MR. KLAR: Yes, I have a few questions.

3 Patenaude-cross

BY MR. KLAR:

Q Mr. Patenaude, are you an attorney?

A No, I am not.

Q As the Deputy Director of the Quebec Police Force are you familiar with any criminal penalties in Canada attached to the interception of any telephone messages?

A Yes, I am, subsequent to the law being enacted July -- June 30, 1974.

Q Well, prior to that date, June 30, 1974, are you familiar with any laws in effect in Canada which would make it a crime to interfere with the use of the telephone?

A No, I am not, except for this particular section of the Bell Telephone Act.

Q Now, with respect to Section 25 of the Bell Telephone Act, is it not a misdemeanor to intercept any messages transmitted on the telephone?

A Not that I know of.

Incidentally, if I may say here, these questions were thoroughly discussed by some of the Canadian attorneys, including the legal officer of the Quebec Police Force prior to the enactment of the privacy act in Canada and as a matter of fact there are some rulings, unless I am grossly mistaken, to the effect that there was no infraction whatsoever to any lawful wire tap.

Q But apparently, you yourself --

MR. KLAR: Withdrawn.

Q Did you yourself review any of the memorandums received from any of these other authorities with respect to the criminal penalties,if any, of intercepting messages?

A I sat on a meeting with representatives from Bell Telephone, our Department of Justice, the Federal Department of Justice, and so far as I know and so far as has been discussed, as a result of some of these meetings, there was never any opinion expressed anywhere that I know of in Canada where prior to June 30th wiretap -- it was against any of the laws, except the Bell, the particular little item in the Bell Telephone Act which might have been an infraction.

Q I call your attention to the Canadian Criminal Code of 1974.

Are you familiar with the section known as Theft of Telecommunications?

THE COURT: I assume you cite prior to '74?

MR. KLAR: Chapter 43, Section 6, Martin's Criminal Code.

Q Are you familiar with that section?

A I have not read it but if you are wanting to suggest that the theft of telecommunications -- I would like

to state right here and now --

Q I am asking you, are you or are you not familiar with that section of the criminal code?

A I might have read it but right now I don't recall it.

Q I ask you to refresh your recollection by taking a look at Section 287(1)(b), if you would, and if you would read that -- 287(1)(b).

A "Everyone who commits theft who fraudulently maliciously or without color of right abstracts or consumes or uses electric or gas or causes it to be wasted or diverts and uses telecommunications, wire or cable or obtains any communication services."

Q Would this mean to you, sir, that it would be a crime of fraud to use any telecommunications in Canada?

MR. PUCCIO: Objection.

THE COURT: Objection sustained.

You are asking this witness who disavows any expertise as a lawyer to express an opinion.

You said you would submit a lawyer who says it is a crime.

MR. PUCCIO: For the record, I understand these laws did not apply to law enforcement people prior to June 30, 1974, and I received an opinion to that effect

from Mr. Landry from the Department of Justice.

THE COURT: I don't know what the effect would be if it were a crime.

MR. PUCCIO: I don't know either, although I would urge that it would have no effect.

THE COURT: Well, I don't know.

Q Mr. Patenaude, who precisely listened to each of the tapes of the Vegas project?

A Pardon?

Q Who in your department listened --

MR. KLAR: Strike that.

Q Who in your department transcribed the interceptions under the Vegas project?

A Sergeant Claude Aube and Corporal Bernard Couture.

Q To your knowledge, when were these transcriptions made?

A The originals of synopsis and the dubs of the master tapes were made in a continuous process.

Like, if a conversation was recorded say at 2 a.m. in the morning it would be listened to any time after 8:30 that same morning and the transcriptions, I mean, the synopsis recorded on the logs would then and there be typed out and put in order of sequence in the master log volume.

Q Who has possession of these master logs?

A The scientific research unit.

Q And who is in charge of that unit, if you know?

A At that particular time I was in charge.

Q So then, these logs would have been in your possession continuously from the time they were transcribed until the time they were made available to the United States Attorney's office?

A Well, they were not personally and continuously in my possession. They were in the possession of the scientific research services and held in their vault.

(Continued on next page.)

Q Was there any procedure in that department for the removal and examination of those logs?

MR. PUCCIO: Your Honor, I think counsel doesn't understand the word logs.

It is the summary of the tape itself.

MR. KLAR: Perhaps a synopsis.

A The log is compiled. The synopsis is compiled in the log.

THE COURT: Are you referring to the tapes themselves?

MR. KLAR: I am talking about the tapes themselves. They were transcribed, weren't they?

I'm sorry, I didn't hear your last remark.

A You must first of all understand that the log is not compiled from a word for word transcription of the recording.

Q Was there any word for word transcription of the recordings made?

A In some logs there are some. In other logs it is just a synopsis of what was discussed. And the more important was the subject matter, the lengthier the synopsis could be --

Q These exact transcriptions and other logs you referred to, were these kept under your control in the

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Department of Scientific Investigation?

A They were kept under the control of the scientific research services in their vault.

THE COURT: Mr. Klar referred to the other translations, even if the conversation was translated or transcribed verbatim, wouldn't it still be part of the log?

THE WITNESS: Yes, some of them are, your Honor.

THE COURT: Not all?

THE WITNESS: Not all. It would take a tremendous -- it would take tremendous human resources to transcribe this verbatim on a day to day basis, especially when you get this number of projects going.

Q Who determined which logs would be transcribed exactly and which would not be?

A This was determined --

MR. PUCCIO: Is counsel saying which tapes will be transcribed?

Q Which tapes would be transcribed? Who made the determination as to which tapes would be transcribed in complete --

A This was decided as a result of these regular morning meetings that we used to have.

Q You were present at each of these meetings?

A Well, I was, except for a holiday period or a day out of town or some other business, but I was always made aware of the contents of all these projects.

Q If someone wanted to examine either the exact transcription or the partial, would they have to sign -- would they have to sign out for those tapes or merely go in and take them home overnight and review them?

A No.

Q What is the procedure of reviewing?

A First of all, the procedure is on a need to know basis.

Q And when --

A Pardon me, I would like to finish.

Secondly, the investigator or the person involved in the operational process, if they have need to know what is going on, they are first permitted to consult the synopsis which is recorded in the log. If this does not still satisfy the investigator, or the operational personnel, and they want some specific point clarified, and if the tapes are available in the original form, they are permitted to listen to certain portions of it.

Q Those people --

A Apart from this, when an investigator takes note of conversation there is most of the times some document

controlling his entry and exit from our office in the form of a ledger that you sign similar to entering the building here.

Q Do you have access to that ledger?

A Yes, I have access to it.

Q Does Mr. Courtiere, on a need to know basis with respect --

A Mr. Courtiere at that particular time was one of the persons working -- employed in this scientific research department, and he was assigned to listening to the project, the tapes, and compiling the logs. Therefore, he had access to all these projects, Vegas 1-B, PT, 3, 4, 5, 8, 9, 11, 12.

Q Mr. Courtiere would have to sign the ledger if he wanted to review or study the --

A Not necessarily. He is a screened and trusted employee of that particular department.

Q He could just take them out of the vault, take them home, and listen to them at home for two days or --

A That is not done in the service.

Q But it could be done without your knowledge?

A With a stretch of the imagination, anything is possible.

Q Would you have any way of knowing if Mr. Courtiere was to take one of the tapes home overnight, assuming for the moment he didn't tell you?

A How could you --

Q In other words, these tapes could be removed from whatever they were kept in and taken to other destinations?

A If I might state here, the people involved in this particular type of work in the Quebec Police Force are thoroughly screened and security given -- the topmost security clearance is given within our office and they must live and abide by the terms and according to their oath of office. And as far as we are concerned, although I might say that anything is possible in this world, I have yet to ever get the slightest, you know, the slightest suspicion that any of this stuff was removed or whatever.

Q Were any agents of the United States Government permitted to listen to any of the Vegas project tape?

A Our policy in the Quebec Police Force and at time, and it is still maintained, still is in effectas of now, a policy of my department is that any information that is generated or is on output of a wiretap and which concerns any other jurisdiction but the jurisdiction of the Quebec Police Force, in certain matters this information is disseminated to them and to further qualified -- or further enlightening information of the investigation, they are permitted to listen in to the tape and read the logs.

Now, insofar as the Quebec Police Force is concerned, if on any one of these wiretaps some information comes out that an armed robbery is going to take place in such and such a place in the City of Montreal, this is automatically disseminated through the Montreal Urban Police Department.

On the other hand, if some information comes out on the tapes that concerns the Alcohol and Morality Service of the Quebec Police Force, it is automatically turned over to them for action.

If it contains fraud, et cetera, et cetera, it may concern any number of Police Departments, and the policy is to transmit whatever information or intelligence we can generate to the police department who can best take the necessary action within its particular jurisdiction.

Like narcotics in Canada are usually the jurisdiction of the Royal Canadian Mounted Police. They would handle all this. Customs, et cetera.

Q I take it then United States Agents were involved?

A Let me --

Q They were?

A They were cognizant of the existence of certain information and tapes.

Q Referring to an Agent Kevin Gallagher, do you

know him?

A I know him.

Q Do you know what department of the United States Government he is with?

A Right now I believe he is with DEA.

Q In 1970, '71, do you know what department he was with?

A He was with the Narcotics -- Bureau of Narcotics and Dangerous Drugs or something like that.

Q Was he one of the agents, to your knowledge, who kept apprised of the Vegas projects concerning the defendants in this action?

A Yes.

Q He -- Yes or no, if you know.

A For the record, let's say that he often, very often, accompanied Staff Sergeant Paul Silvi of the Royal Canadian Mounted Police to our office at which time we would have conferences and discuss and analyze the information that was recorded on the tapes.

Q Do you know of any other agents who were on the investigation of this particular case?

A There were a few other RCMP members.

Q Just the United States --

A If I recall, Agent Swenson.

Q Anybody else?

A That is the only two.

Q Did you and the Minister of Justice and Inspector General of Quebec from time to time during the period 1965, 1970, review each of the tapes that were authorized by you in the Province of Quebec?

A That is a two-part question. The Minister of Justice did not at any time become involved in the operational processes of the Quebec force insofar as wiretapping is concerned.

Now, this chain of communication and line of information as to whether or not the agreement was respected was by -- through the Director General of the Police Force and I must tell you that twice per week I had a meeting with my Director General for the specific purpose of reviewing the projects, the electronic surveillance projects at hand, and at that particular time I had to fully justify the reasons for which I had authorized a wiretap.

Q Were records kept of those meetings? Written records.

A You know, it is an interview with the Director General. He calls you every day.

Q Do you have a secretary or stenographer there?

A These are not meetings recorded, they are in

the normal transaction of police business every day.

But, oddly enough, I must admit this: In all frankness, I don't think I would have dared get involved in an electronic surveillance which was not fully justifiable.

MR. KLAR: I will move to strike the last portion of the answer as not responsive.

THE COURT: No, it is a hearing and non-jury. Any other questions?

MR. POLAKOFF: I just have two questions.

(Continued on next page.)

CROSS-EXAMINATION

BY MR. POLIKOFF:

Q Your department and the United States department cooperated freely, isn't that so?

A No, we cooperated freely with the RCMP in Canada.

Q What about the narcotic offices of New York?

A They probably have their contacts with the Royal Canadian Mounted Police, maybe through some agreement they have which I am not familiar.

Q How did Mr. Gallagher communicate with you?

A What do you mean?

Q Was he made -- was he apprised of what was going on?

A Through Staff Sergeant Paul Sauve.

Q With your approval?

A WEll, I transmitted the -- disseminated the information to the RCMP for the negotiations and after the transmissal of information it is customary in the department to find out what has been done with the information that we have transmitted.

And I also know, Mr. Polikoff, that Mr. Sauve and Mr. Kevin Gallagher were in my office and we had discussions with each other.

Q That's what I am asking.

A We did.

Q That's all the question was, I don't know why you went into the long speech.

Did Mr. GAllagher suggest to you what wires to tap?

A No.

Q You mean to say if he knew of important narcotic transactions and he asked you to furnish wiretaps for that purpose you wouldn't do it?

A No, no sir.

Q You wouldn't?

A No sir.

Q But you acted upon hearsay information or suggestions from your offices that were far less important?

THE COURT: Objection sustained.

A I beg your pardon, sir.

THE COURT: Objection sustained. You don't have to answer that. That is argumentative.

MR. POLIKOFF: Yes, I am arguing because he is giving long-winded answers and you have to argue.

THE COURT: Mr. Polikoff, it is a far different thing to say you acted on information that was far less reliable --

MR. POLIKOFF: All right, I will withdraw it.

THE COURT: Here are people, wives of husbands who say that their husbands drop by in the gambling place and lose their money.

MR. POLIKOFF: That is all right. If Mr. Gallagher comes and tells him I have good information concerning a possible large narcotic violation, I wanted to know if he would act on that information.

THE COURT: He said no.

A No, I wouldn't. In this present case --

Q Will you please just answer the question.

A Yes, I will.

Q Thank you.

So I understand, if any agent of the United States Government came to you and said they have information of a bank robbery, or some other crime, and suggested that a certain wire be tapped which would lead to very important information on that project, you wouldn't act upon it?

A Not immediately. Not necessarily.

Q Would you act upon it, yes or no?

A I would receive the information. If it was qualified I might and I might not. Every case is treated individually.

Q Again, I am giving you an example --

THE COURT: Suppose you found the information reliable, would you act on it?

THE WITNESS: I probably would.

THE COURT: All right, go ahead.

THE WITNESS: I probably would.

Q In this case, were you acting upon any information furnished to you by the United States Government?

A No sir.

Q Now --

A We were acting on information obtained through a series of wiretaps as of July 1970.

Q I am talking about '70, '71. Didn't Savoy make personal observations in the company of Gallagher?

A Who?

MR. PUCCIO: Sauve.

THE COURT: Who is Sauve?

THE WITNESS: A member of the Royal Canadian Mounted Police.

THE COURT: What is his name?

THE WITNESS: Paul Sauve, S-a-u-v-e.

Q Did any members of your department -- that's the Provincial Police, am I right?

A Yes.

Q -- work in conjunction with Mr. Gallagher?

A They may have been present on certain occasions when I --

Q In other words, you don't know, isn't that the answer?

A (No response.)

Q You are now giving a supposition. The fact is you don't know whether he did or didn't?

A I can't reply unless I check the records.

Q You don't know now?

A No.

Q You knew you were coming here to testify, didn't you?

A Yes.

Q And those questions might be asked of you?

A I can't second-guess it.

Q But you came prepared pretty well, you prepared yourself pretty well?

A To answer the questions of which I was responsible on items that I was responsible for.

Q Could Mr. Gallagher use the services of anyone of your offices without consulting you?

THE COURT: You mean directing him to do certain things, to conduct certain police work?

MR. POLIKOFF: Yes.

THE COURT: Without --

MR. POLIKOFF: Without consulting the chief.

A My men would not work with Mr. Gallagher alone. They would go through Staff Sergeant Sauve. When I was not available or couldn't reach me, they could have gone out on their own depending on the requirement at some specific point in time.

Q Was there ever an occasion that you were aware of that he worked with anyone of your men?

MR. PUCCIO: He, meaning Gallagher?

Q Of course.

A I don't recall, Mr. Polikoff, for the moment.

Q If I recall, you or one of your police officers listened to the tapes the following morning. If they were on from 2 to 10, if they were on from two hours to ten hours, when would those tapes be listened to?

A You mean 2:00 a.m.?

Q 2:00 p.m. to 10:00 p.m.

A They might be listened to simultaneously. They might be listened to two hours after. They might be listened to four hours after, depending on the volume of work to be done.

Q And a log was prepared?

A Synopsis.

Q You call it a log?

A Yes.

Q I am using your language.

Were there occasions when the entire tape was transferred from the master tape to the dubb?

A Will you kindly excuse me and repeat your question? I didn't quite get it.

Q I will repeat it. There were times, were there not, when the master tape was dubbed to a tape you kept for future reference?

A Yes.

Q Was the entire master tape dubbed when you dubbed a tape?

A No, we did not dubb the entire master tape, we only dubbed those conversations which were deemed to be of some importance.

Q Which you deemed to have some importance?

A Which was deemed important after discussion.

THE COURT: I am going to suspend soon.

Q When I said you, I meant your department or some of your subordinates. I didn't necessarily refer to you alone.

There were many occasions when only parts of the master tape were dubbed?

MR. PUCCIO: Are you referring to the original tapes?

THE COURT: I am not going any further.

MR. POLIKOFF: I just want to --

THE COURT: I put in a pretty full day, I am tired. I am weary. It is 6:00 o'clock. Your estimate originally was this would take about a half-hour.

MR. POLIKOFF: Yes. What is your pleasure, your Honor?

THE COURT: How much longer do you think it would take?

MR. PUCCIO: I don't know how long the cross examination is going to be.

MR. POLIKOFF: Two minutes.

MR. PUCCIO: I don't think we can finish tonight, we have another witness.

THE COURT: I don't know if I have some time tomorrow.

MR. PUCCIO: Can I confer with the witness?

THE COURT: Surely.

(Pause.)

MR. PUCCIO: We can be available tomorrow afternoon.

MR. POLIKOFF: May I make a suggestion, your

Honor? In the first place I want to make sure we are in agreement subject to your Honor's approval that we have agreed to adjourn the case to January 3rd on condition --

THE COURT: January 6th, you mean.

MR. POLIKOFF: Yes.

MR. PUCCIO: Is that a Monday, your Honor?

THE COURT: Yes.

MR. POLIKOFF: On condition that I make no application to have the bail of Cotroni reduced.

THE COURT: On the further condition no one will ask for any further adjournments.

MR. POLIKOFF: That is a firm date.

MR. PUCCIO: Further condition, if depositions are to be taken that the depositions be done within two weeks before the trial.

MR. POLIKOFF: I agree to that.

MR. PUCCIO: So that we can proceed immediately on the 6th.

MR. POLIKOFF: I agree.

MR. PUCCIO: I further ask if there is any objection to the transcripts they be made at least two weeks before the trial.

THE COURT: That is very important. That

could delay the trial.

MR. POLIKOFF: Re may not agree to the transcript.

MR. PUCCIO: I only ask that objections to the transcript be made.

THE COURT: I think the answer to that is if there is a difference of opinion that the one objecting submit their own version and both versions be given to the jury.

MR. PUCCIO: I would like to have Mr. Polikoff, Mr. Klar, and all defendants' versions in writing well in advance so I could consider them.

MR. POLIKOFF: Two weeks. May I make a suggestion subject to the convenience of the Canadian authorities? I realize they have a job to do. Mr. Puccio has promised us today a raft of further papers. We haven't received the English translation which I assume we are getting today or tommorrow. If this hearing could go over to some day next week at your Honor's convenience and subject to the approval of the Canadian authorities, and we had all the information, we may be able to shorten the examinations completely.

THE COURT: It is difficult for me to know

when I have a free day.

I think the only way I could do it would be on 24 or 48 hour notice.

MR. PUCCIO: That is fine with me.

MR. POLIKOFF: I just have two questions of this witness and we can excuse him.

THE COURT: All right. Let's go on.

MR. ROSENTHAL: I have a few questions, I hope it is not too long.

THE COURT: Go ahead.

BY MR. POLIKOFF:

Q Do you recall my last question? I think you said that when you dubbed a master tape you did not dubb the whole tape, you only dubbed those portions of the master tape that you and your associates thought were of importance, am I correct?

A Correct.

Q Once you made a dubb tape, you kept that tepe permanently, did you not?

A I do believe so.

(Continued next page.)

Q And those tapes would be available to us, the defendant?

A In that time frame of December 1 to January 31, 1971.

Q Within the two or three months between the end of 70 and the early part of '71?

A And agreed, Mr. Polakoff, that we only kept the conversations that were deemed important to a specific incident or investigation.

Q I said that, didn't I? That you and your department deemed important.

A I agree, correct.

MR. POLAKOFF: Your Honor, I think that's all.

CROSS-EXAMINATION

BY MR. ROSENTHAL:

Q Who prepared the logs, was it Officer Coutiere?

A And Obie.

Q And you had these logs ttyped up?

A They used to type them up themselves?

Q Did anybody else but they review the log?

A Logs in this particular connection were reviewed by Staff Sergeant Paul Sauve from the RC&P, reviewed by myself on occasion, and they were read by Mr. Sauve and Mr. Gallager on occasion, and the contents of the logs were

discussed jointly between Mr. Aube, Mr. Courtiere, Mr. Gallager, Mr. Sauve and myself. It all depended on the importance of the conversation.

Q In other words, Officer Gallager knew about the wire taps being placed on certain phones?

A Well, I presume he would.

Q Was he also informed that these tapings were done without any court order?

A (No response.)

Q Do you know if he knew that, whether you informed --

THE COURT: I will assume he knew it. I assume you are trying to get within Toscanino. If that ever is sustained by the Supreme Court. Go ahead.

MR. ROSENTHAL: I want to place on the record --

THE COURT: You know, Toscanino talked about active participation by the agent. That he knew means nothing. Go ahead.

MR. ROSENTHAL: Your Honor, again we disagree. I think the officer didn't actively participate, I think they stood by when the Court thought they shouldn't have.

THE COURT: You haven't read Toscanino either.

If you did you did you didn't understand it.

MR. ROSENTHAL: We disagree again, your Honor.

THE COURT: It was only my case, you know.

MR. ROSENTHAL: Just as Patrone was my appeal.

THE COURT: You misread your own case. Go ahead.

Q Did you ever discuss the fact you had a tap on the telephone, and in Canada you can tape phone conversations in your opinion, without any --

A We don't discuss this with officers from foreign countries, this is our own office.

Q You didn't tell anybody you could tap a telephone in your Country without restrictions?

A No. Why should we?

Q The mechanism that you had on these telephones, it was an automatic one that would start when the phone was being activated and went off as it was --

A Yes.

Q You would take any telephone conversation that came across whether it dealt with something you were looking for or family problems--

THE COURT: Can you get here a quarter after 9:00 in the morning?

MR. ROSENTHAL: Your Honor, I am finished.

This is my last question.

THE COURT: All right, go ahead.

Q In other words, sir, could the machine -- would that take down any conversation whether it was concerning activities you were interested in or concerning just family affairs?

A All activities even an order for a dozen donuts from the bakery shop at the corner.

MR. ROSENTHAL: I have no further questions.

THE COURT: You may step down.

MR. POLAKOFF: You will give us 48-hour notice, your Honor?

THE COURT: Friday the 29th, the day after Thanksgiving as a tentative date.

MR. PUCCIO: To continue the hearing, your Honor?

THE COURT: Yes.

And everything else in the case.

MR. PUCCIO: I would ask that we be informed of any motions or depositions --

THE COURT: All motions, all depositions. Everything must be finalized then. I want to be advised at that time, and I hope to make it in the

morning.

Now, for some reason or other I can't -- I will give you enough notice so I won't disturb your schedule.

MR. POLAKOFF: We appreciate your Honor's consideration. I'm sorry, I know how you feel. I am pretty tired too.

I assure you, if I say two questions I won't run over three. My time is valuable too.

THE COURT: Now it's ten after 6:00. I came here by subway this morning and I took the subway at ten minutes to 7:00 and I got here at 8:00 O'clock. from then on I have been on and off the bench and listening to lawyers all day. It's worse then listening to wives tales all day. And the questions all sound alike after a while. They sound meaningless after a while. That is my reaction. Mr. Rosenthal started talking about matters I am so familiar with. By golly, you mean to say because an agent knows something is going on in the country that it is barred from admisibility?

MR. ROSENTHAL: No, he's got to participate.

THE COURT: Mr. Fisher came in in Toscanino and made the wildest claim and wanted me to have a

hearing. I said that I refuse. You go up to the Court of Appeals on the most outlandish claims. He said that our money went into it. The United States initiated the investigation. They corrupted the local police. They showed them how to wire tap. They kidnapped Toscanino and drugged him, assaulted him, and put him on an aeroplane and dragged him here and taped every wire in Brazil, Uraguay and Paraguay.

And what did the Court of Appeals say about it? Judge Mansfield questioned the admissibility of wire taps. But I don't think, even under his broad decision, he would deny wire taps because an agent knew what was going on through a program initiated by the Canadian authorities and they stood by and accepted the fruits of it.

If they refused to do it, they should be fired from the force. Could you imagine our agents standing by the Canadian Police gathering all of this and saying, "I am sorry, I can't touch it, it is in violation of the United States law"? That's what you are saying.

MR. ROSENTHAL: I am not saying anything. I am talking on an intellectual level, the agent should

do whatever he should do.

THE COURT: You are telling us that if he knew what was happening, and it was happening without a court order, that was enough under Toscanino.

MR. ROSENTHAL: Maybe it will be.

THE COURT: Not under Toscanino. Maybe under United States against Cotroni, but not under Toscanino.

MR. PUCCIO: That is if the Toscanino case survives.

THE COURT: Amen.

MR. PUCCIO: Which is a big if.

MR. ROSENTHAL: Your Honor, in trying to fit in all the --

THE COURT: Mr. Rosenthal, you live in Brooklyn Heights?

MR. ROSENTHAL: Yes.

THE COURT: You'll probably be home by 6:30?

MR. ROSENTHAL: Probably by 6:20.

THE COURT: I won't get home until 7:20. And I have to get some reading done tonight and try to get to bed early enough to start a fresh day tomorrow, and face the lawyers for one more day before the weekend.

MR. ROSENTHAL: I have to face judges.

THE COURT: Good day, gentlemen.

MR. POLAKOFF: I wish you the best.

MR. KLAR: Can we get a transcript of the proceedings?

MR. POLAKOFF: Not this.

THE COURT: All right. The reporter will make sure that you get it.

(An adjournment was taken at this time until November 29, 1974.)

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I hereby certify that the foregoing is a true and accurate transcript from my stenographic notes in this proceeding.

Official Court Reporter
U.S. District Court

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- 73-CR-898

FRANK CATRONI, FRANK DASTI & PAUL ODDO, :

Defendants. :

----------x

FILED
IN CLERK'S OFFICE
U.S. DIST. COURT E.D. N.Y.
DEC 1974
TIME A.M.
P.M.

United States Courthouse
Brooklyn, New York

November 29, 1974
10:00 o'clock A.M.

B e f o r e :

HONORABLE JACOB MISHLER, Chief U.S.D.J.

EASTERN DISTRICT COURT REPORTERS
225 Cadman Plaza East
Brooklyn, New York 10021

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Attorney for Frank Dasti

MAX FRUCHTMAN, ESQ.
Attorney for Defendant Oddo
BY: JERALD ROSENTHAL, ESQ.
Of Counsel

Also present:

LOUIS PHILIPPE LANDRY

R. F. PAUL

THE COURT: Both sides ready?

MR. IANNUZZI: The defendants are ready, your Honor.

THE COURT: I have substitution of attorneys for Mr. Catroni. I assume that, Mr. Iannizzi, you have familiarized yourself with all the pre-trial discovery that the government has thus far given or offered to Mr. Polakoff, is that right?

MR. IANNUZZI: Yes, sir, to the extent that I have made myself familiar with all of the material. Some of it is in French and we are awaiting some translations by Mr. Puccio, but I have made myself familiar with all the material that has been handed over, and the minutes of the proceedings on the 11th and on the 14th.

THE COURT: Mr. Polakoff is in court?

MR. POLAKOFF: Yes.

THE COURT: I just want your presence to be noted for the record so there is no claim later that there was a break in communication or in representation, and that Mr. Iannuzzi has the full benefit of everything you have done to date.

MR. POLAKOFF: He has, your Honor, and I have agreed at my client's request to remain in an

advisory capacity as long as it's necessary.

THE COURT: So you will be in the case?

MR. POLAKOFF: To some extent.

MR. PUCCIO: Just so there is no mistake about it, there are three different folders of discovery and other material which have been handed over. All of them have been filed with the Clerk of the Court as well, but they have been handed over to defense attorneys, they are dated November 1st, November 8th and November 14th, and I'd just like to be sure that Mr. Iannuzzi has those materials. I'm sure he can obtain all three of them from Mr. Polakoff.

MR. IANNUZZI: I have Nos. 1 through 64. I think that is complete.

MR. PUCCIO: The first volume goes up Item 27, that would be the November 1st. Then the next volume dated November 8th goes up -- goes from 28 to 42 and the last volume dated November 14th goes from 43 to 64. I will have additional material.

MR. IANNUZZI: As I indicated to the Court, I have seen the three folders, including Nos. 1 through 64, and as I have indicated to the Court, Nos. 60 through 64, which includes some 200 -- well, approximately 200 pages of summaries or logs are

all in French. I have sent my copy out, or at least I have made a photostat and sent it out for translation purposes, because I didn't read French. I noticed in the minutes of the proceedings that your Honor doesn't read French either. I have not yet received translations of 60 through 64 inclusive, and I have asked Mr. Puccio for the same, but not even relying upon that, Ihave sent them out for translation but I have not received them back as yet.

MR. PUCCIO: Just for the record, your Honor, any conversation which we hope to introduce at the trial, of course, we will translate, offer a translation for. In addition to that, summaries of conversations which involve Mr. Catroni or Mr. Dasti or any other defendants or conspirators we have translated. There are many, many conversations which are recorded on these logs or summaries, which are in French, which we are turning over but don't plan to have translated because they are not pertinent at all to the case.

THE COURT: I see.

MR. PUCCIO: But we are handing them over in the French.

THE COURT: Thus far, I find in the file only the November 8th pre-trial discovery. I assume

the others are --

MR. PUCCIO: The others have been filed, your Honor, and they are in the Clerk's office. I have had my secretary check on it.

THE COURT: They may be in the process of filing, but I assume --

MR. PUCCIO: Your Honor doesn't have the first one, which is the largest one, up at the bench, but it is in the Clerk's office.

THE COURT: There may be more than one file. I just have one file.

MR. PUCCIO: If you want, your Honor, I could send someone down to bring them up, if you like.

THE COURT: We can call to find out whether they have the record of filing the November 1, 1974 folder of pre-trial discovery and -- what was the last one?

MR. PUCCIO: The last one was November 14th.

THE COURT: And November 14th. All right.

MR. IANNUZZIO: If your Honor please, Mr. Puccio has indicated that whatever telephone conversations they would intend to ultimately submit or introduce in evidence will be translated. However, it is my opinion, most respectfully, that notwithstanding that there are certain conversations that

they would introduce, that is, that they would be helpful to the government's case, naturally, there are all conversations relative to the wiretap that would be pertinent to the hearing, and also there would be statements that were made or summaries made which may not be introduced by the government but may very well be matter that the defense would deem proper.

I think we should at least agree upon a translation thereof. That's why I was more or less anticipating a translation by the government, or I will them translated but then they will have to look at my translation and maybe have them translated any way.

THE COURT: If you can agree on the translation of all the conversations, that would be fine. I think it's important that you first try to get agreement on those that you think are relevant and that you intend to offer.

MR. IANNUZZI: Yes, sir.

THE COURT: Because I don't know how much time is left for translations. I know it's a laborious, time consuming job. So you will have full opportunity to introduce any conversation that you believe is pertinent and that I rule is admissible.

I don't know that everything that Mr. Catroni says is admissible, but that is a question of a ruling by the Court at the time it's offered. But in the meantime, I certainly think that you and Mr. Puccio ought to try to agree on all the translations.

MR.IANNUZZI: Yes, sir. Since there are none in existence, I haven't received any from Mr. Puccio, I have gone out to do it independently. But I do suggest to the Court, most respectfully, that this does create some difficulty as far as this hearing because in this last volume, which is No. -- which is Nos. 43 to 64,five numbers of the exhibit are in French and there are about 200 pages of summaries of conversations. The conversations themselves may have been destroyed. They may not exist in these summaries.

THE COURT: Let's see how real the problem is for the purpose of this hearing.

MR. PUCCIO: Your Honor, I do have up in my offic now additional translations. I mentioned before that with respect to these logs wh ich we have already handed over in French, we have translated the summaries or the word for word conversations which are pertinent. I do have them pu in my office now, they are being reproduced and I hope to hand

them over later today.

I don't think that the actual translations, the actual instances of these conversations is pertinent at this point.

(Continued on next page)

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THE COURT: I doubt that it is. If it is then we will talk about it then. But you may find that it's only important in the trial. As I understand it, what is important for this hearing is to determine how it was done. Whether it was done in accordance with Canadian law, wiretap law; whether the summaries fairly and accurately represent what transpired, and just generally the subject matter.

An attack on the specific word, whether it was spoken in French, and if so, what the translation means, may be for another day. Let's have the oral testimony from the men that conducted the wiretap and the men that heard the originals and summarized them.

I understand that they are here.

MR. PUCCIO: Yes.

THE COURT: All right. Let's hear them.

MR. IANNUZZI: If your Honor please, before we initiate that, I would like to merely address myself to some proceedings that had gone on before, because I have written to Mr. Puccio as of Wednesday --

MR. PUCCIO: Yes, I received a notification of the substitution and also a letter from Mr. Iannuzzi was delivered by hand about 5:00 o'clock on Wednesday. So I haven't, of course, had a chance

to explore everything he's gone into.

MR. IANNUZZI: If I might suggest, however, I indicated by letter on Wednesday, the 27th, a need for, in my estimation, various materials pertinent to this hearing.

If your Honor please, in reading the minutes of the 11th of November, I became aware of a difficulty that apparently your Honor is also aware of, and that is that we have here something quite unusual, in my estimation, and that is automatic recording equipment.

I suggest, if your Honor please, that I have not come across the problem in exactly -- exactly such as this before, but I would suggestthat we have grave problems of admissibility as a result of these machines working automatically, and I have asked Mr. Puccio for the people who installed them and for the equipment itself to be produced.

Your Honor well noted on the 11th that you cannot cross-examine a machine. I suggest, if your Honor please, that there is many a problem with malfunctioning machinery, and if no one is monitoring those machines, we don't know what malfunctions may or may not have been.

Mr. Puccio made a reference to the fact that it is a scientific item and therefore, it could be

3 testified to as to its functioning, just like a photograph needn't be described as to what it contains.

I suggest, however, in my experience, photographs are usually introduced by a photographer who took them, who testifies that this is a fair and accurate representation of what I saw that day.

MR. PUCCIO: Of course, it doesn't always have to be the photographer. The photographer rarely is. All we want is the photograph, not the photographer.

MR. IANNUZZI: But someone has to be able to introduce that particular photograph, not a camera. What we have here are tapes. We don't know how they were taken. For instance, if in fact the machine malfunctions in the middle of a conversation, begins to operate in the middle of another conversation, we have on the tape what is ostensibly one conversation but in fact is two.

THE COURT: Isn't that self-evidence from hearing the tape?

MR. IANNUZZI: No, sir. After all, we have had within recent time an example of tapes that have been doctored and edited and spliced together. Suppose that is done by way of malfunction as opposed to purposeful splicing together of a conversation.

If it happens to be done in such a fashion by malfunction as to be indiscernable, that is to say in the midst of a conversation the machine turned off --

THE COURT: Mr. Iannuzzi, I am going to hear the witness first. When we are through with that we will find out what can be done about offering you the examination of a typical machine.

I understand there were some 300 machines, something like that?

MR. PUCCIO: May I check, your Honor?

THE COURT: Of course, you'd like to identify the particular machine used, right? On the theory that it can't be done?

MR. IANNUZZI: Pardon me?

THE COURT: You want the particular machine identified, right?

MR. IANNUZZI: I would like the machine.

THE COURT: The machine, on the theory that it can't be identified, right?

MR. IANNUZZI: On the theory that the machine can't be identified?

THE COURT: That's right.

MR. IANNUZZI: No, not on the theory that it can't be. On the theory that it can't be and we can

examine it.

THE COURT: If it can be then we have no problem.

MR. IANNUZZI: Yes, sir.

MR. PUCCIO: There are at least -- there are nine different projects that are relevant here. There are at least nine different machines.

THE COURT: How many machines are there --

MR. PUCCIO: Of course this is in 1970 and 1971.

THE COURT: Mr. Patenaude mentioned a number--

MR. IANNUZZI: Fifty, I believe was the number. He used that as a round figure of how many machines the police force had.

MR. PUCCIO: That would be an estimate of how many machines they had. Not every machine, of course, was used in connection with this case.

THE COURT: Does the Government concede that it can't identify the particular machine used in each conversation?

MR. PUCCIO: Mr. Patenaude is, of course, in court today, he was -- the defense asked to have him here again. It is impossible at this time to pinpoint the exact machine that was used to record every one of these conversations.

6 Now, I suppose that certain machines were used for the projects -- and those machines may still be in existence.

THE COURT: Mr. Patenaude is here. If you want to put him on now do so or put him on after we get --

MR. PUCCIO: I thought I'd have him take the stand first.

I am finished with my questions and I believe the defense has some additional questions for him.

MR. IANNUZZI: Sir, may I indicate to the Court for the purposes of the record the various items that I feel are pertinent so that --

THE COURT: Yes.

MR. IANNUZZI: May I read from that letter? I didn't bring my copy.

THE COURT: Do I have a copy of the letter?

MR. IANNUZZI: No, I will give you one this afternoon, Judge.

THE COURT: Mark it.

THE CLERK: Exhibit A marked for identification.

xx (So marked.)

THE COURT: Are you ready now?

MR. IANNUZZI: I was going to indicate for the record those items so that your Honor can perhaps take those into consideration.

THE COURT: It's Defendant's Exhibit A, and I would say that there are eight paragraphs and 2 has subdivisions from A to G, inclusive.

MR. IANNUZZI: May I read that into the record?

THE COURT: Go ahead. Read it into the record.

MR. IANNUZZI: You are very kind, sir. If your Honor please, I believe that for the purposes of this hearing, we will -- we have referred to translations as a result of French language synopses or logs, and that is item 1. But in addition, we will have to have, I believe, production of all persons inthe chain of custody of the original tapes, including, but not limited to all persons who listened to the original tapes before destruction. And all persons who made or assisted in making copy tapes or dubs of the original tapes, and all persons who had custody and access to the copy tapes.

In addition, we need the register in which all persons who had access to the copy tapes registered their custody or use of the said tapes.

In addition, we need all persons who actually installed the automatic taperecording equipment on each project.

8 In addition, we need all persons who serviced the automatic tape recording equipment, whether by adding, removing or changing tapes, or the repair or change of the said automatic equipment.

We will need all records -- I don't have this written, but in connection with that I would imagine we will need all records as to the servicing, repair of the said automatic equipment. And all persons who operated any and all equipment to which the tapes were thereafter subjected, subsequent to being removed from the automatic tape recording equipment.

And I would ask, if your Honor please, for copies of all the original tapes where available.

In addition, where the original tapes aren't available, information indicating why the same were destroyed, when the same were destroyed, how the same were destroyed and by whom the same were destroyed.

In addition, all copy tapes or dubs, as Mr. Patenaude referred to them, made from the original tapes on all Vegas' projects, whether intended to be introduced at trial by the Government or not and each automatic machine used in fact to record any or all of the original tapes on any or all of the Vegas' project for the purpose of examination, testing and demonstration.

9 And, in addition, all equipment used in creating the copy tapes, dubbing the copy tapes used for playback of original tapes or erasure or destruction of the original tapes of all the Vegas project tapes for the purpose of examination, testing and demonstration.

And, in addition, producing all -- any and all existing transcripts, any synopses of all the original tapes of the Vegas project in addition to those intended to be introduced at trial.

If your Honor please, I feel that these items, and all of them, would be necessary for a complete hearing to determine the admissibility --

THE COURT: For the hearing?

I may decide many of these as a matter of law, maybe all of them, but we will hear the witnesses first. Call your witness.

MR. PUCCIO: Yes, I'd ask Mr. Patenaude to resume the witness stand, your Honor. I have no further questions for him, but he was requested by two defense counsel, by Mr. Iannuzzi and Mr. Klar, so I imagine they will have questions.

MR. IANNUZZI: If your Honor please, if this is merely for the purpose of cross-examination, may I just ask the Court's indulgence for five minutes?

I have at the counsel table with me, and I'm sorry I didn't introduce him previously, Mr. Maranda, who has arrived here late last night, and I have spoken with him for a moment or two before your Honor took the bench.

May I have just a couple of minutes to talk with him in reference to certain items before we resume cross-examination?

THE COURT: All right. Five minute recess.

MR. PUCCIO: For the record, Mr. Landry, who is the Director of the Department of Justice in the Province of Quebec is in court and Mr. Ray Jean Paul who works with Mr. Landry.

In addition, we have many witnesses, and I'd ask -- I know the last time we were here there was a request to exclude certain people. Of course, I'd want Mr. Landry and Mr. Ray Jean Paul to remain, they are attorneys, and I believe they should be permitted to stay here, but if there is an exclusion order still outstanding for the other witnesses we will have them leave the courtroom.

MR. IANNUZZI: If there is one -- I would move at this time to have all witnesses excluded during the testimony of other witnesses.

THE COURT: All right. All witnesses are

11 excused from the courtroom. You may take your place in the witness room if you want to, or is there another place --

MR. PUCCIO: I believe they can stay in my office, your Honor.

THE COURT: Let's get along with this. I want this hearing completed today. I'll be back on the bench at 10:30.

(Recess.)

THE COURT: Will you please take the witness stand, Mr. Patenaude. You understand you have been previously sworn and you are still under oath.

THE WITNESS: I do.

THE COURT: Please be seated.

Proceed, Mr. Iannuzzi.

MR. IANNUZZI: If I may, Judge, I know that Mr. Puccio has indicated that there are a couple of gentlemen who are attorneys here from Canada, and I would suggest, if your Honor please, that if they are to be witnesses, that they, too, or all lawyers should be excluded because of the fact that they are here as witnesses not as legal counsel.

THE COURT: Are they here as fact witnesses, Mr. Puccio?

MR. PUCCIO: They are not here as fact witnesses.

12 They are here in the event the testimony is --

THE COURT: Motion denied. Get on with the hearing.

MR. IANNUZZI: It is my understanding that we have a very serious legal question here --

THE COURT: Mr. Iannuzzi, are you ready to cross-examine Mr. Patenaude or shall I ask him to step down.

MR. IANNUZZI: I just ask this, Judge, in reference to the witnesses, we have a serious factual question of law here.

THE COURT: Mr. Iannuzzi, motion denied.

Cross-examine Mr. Patenaude. You will find I like to move matters along in this courtroom. I don't have time to waste. When I make a ruling that's it.

There is a place to appeal my rulings.

MR. IANNUZZI: Very well.

(continued next page.)

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H E R V E P A T E N A U D E , called as a witness herein, having been previously duly sworn by the Clerk of the Court, resumed the stand and testified further as follows:

CROSS-EXAMINATION

BY MR. IANNUZZI:

Q Mr.Patenaude, is that the correct pronunciation, sir?

A Patenaude.

Q In the Province of Quebec, sir, is there what is known as a Police Board?

A There is a Police Commission in the Province of Quebec.

Q And is this Police Commission an authorized legal entity to establish the overall policy of the Police Department?

A I have with me here the Quebec Police Act. If I may quote --

Q If you please --

A I will quote from it or file it with the Court.

MR. IANNUZZI: May I ask that the witness be asked to be responsive to the question?

THE COURT: Please answer the question. Strike the answer as not responsive.

MR. PUCCIO: Of course we don't -- the proceedings are in English, and as I pointed out last time, and as I understand, Mr. Catroni and Mr. Dasti speak French and some English. I just wanted to point out to the Court that the defense last time said that they would make provision for translation.

THE COURT: All right.

The gentleman from Montreal, your name, sir?

MR. MARANDA: Maranda, first name is Leo Renee.

THE COURT: You indicate that you will translate for Mr. Catroni?

MR. MARANDA: It will be a pleasure.

THE COURT: Mr. Dasti?

MR. KLAR: Mr. Dasti doesn't require an interpreter.

MR. IANNUZZI: May I have the last question read.

(Record read.)

THE WITNESS: "The Police Commission of the Province of Quebec shall promote the prevention of crime and the efficiency of police service in Quebec and for such purposes shall cooperate in the establishment by the police force of a Central Information and Statistic Service for the purpose of facilitating

the detection of crimes and the tracking down of persons responsible thereof, and in keeping such service at the disposal of other police forces. "

This is described in the duties of the Quebec Police Commission, which is the Quebec Police Act.

MR. IANNUZZI: If your Honor please, he's reading from a document.

THE COURT: I will allow it to stand. This is a hearing and not a trial, Mr. Iannuzzi.

MR. IANNUZZI: Very well.

BY MR. IANNUZZI:

Q Does this Police Board or Commission, as you refer to it, or Board of Commissioners, have the requirement under law in your province to determine police policy, if you know?

A The Commission by bylaw may, then the Act describes exactly what they may do --

THE COURT: Can you answer that question, whether the Commission makes police policy?

If you can't answer it say you can't answer it.

THE WITNESS: They do make certain police insofar as training and improvement of the police institute, and the various crime prevention programs, participate in the establishment of statistical

services and set out the general requirements to become a police officer in the Province of Quebec, as well as establish rules of ethics respecting the conduct of Police Force Cadets, members of the Police Force and so on and so forth.

But, your Honor, this is all found in the Quebec Police Act.

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THE COURT: How about general policy as to who investigates and who to investigate?

THE WITNESS: No, they did not, your Honor.

The Quebec Police Force has its own policy. own directives, and initiates its own law enforcement programs in the Province of Quebec, without any -- without any interference whatsoever from the Quebec Police Commission.

CROSS EXAMINATION

BY MR. IANNUZZI: (continuing)

Q Is there in fact a Police Act in Quebec?

A There is a Police Act in Quebec.

Q And in that Police Act is there this Police Commissioner's, or Commission of Police established by the Police Act?

A Yes, it is.

Q And pursuant to the Police Act, is it your testimony that the -- Am I referring to it properly when I say "The Board of Commissioners"?

A It is the Police Commission.

Q And this Police Commission, you indicated, among other things, makes determinations of matters of ethics?

A Yes, it does.

Q And who sits on this Police Commission?

A The correct Police Commission is a permanent entity which is appointed by the Quebec Provincial Government, and it is composed of a President.

Q May I ask you who that is? Is it a particular position in the official heirarchy, or just someone --

A It is a particular position with a specific appointment.

THE COURT: Are the Directors of the various Police Forces within the Province members of that Commission?

THE WITNESS: They are not, your Honor.

Q Are there various Judges and Lawyers who are members of the Commission?

A I believe the Act says that the President of the Quebec Police Commission must be a Judge from the Provincial Court.

He is assisted by Commissioners of Police, which are also appointed by the Lieutenant Governor and Council in the Province.

Q And in addition to the person who is the head of the Police Commission, how many other members are there on this Police Commission?

A I believe that presently there are nine.

Q And of those nine, does that include the head of

the Commission -- In other words, nine altogether?

A I would like to specify, but cannot, and maybe I could find that out a little later fo your information, but I believe it is nine, five of which are Judges, and four are appointments, and for the most part are ex-Senior Officers from various Police Forces within the Province, and one, I believe, is a sociologist.

Q Would it be fair to say that the Chiefs of Police are not members of the Commission?

A None of them are.

Q And would it also be fair to say that the Inspectors or inferior officers of the Police Department are also not members of the Commission?

A They are not members of the Quebec Police Commssion.

Q And would it also be fair to say that the Police Act in sum or substance creates the authorityh for the Police Commission to make regulations which are intended for the prevention of neglect or abuse of Police Regulations, and for rendering the Police Force efficient in the discharge of its duties?

A The Quebec Police Commission has the authority to investigate any dereliction of duty which may be committed by a Police Officer in the Province of Quebec, upon complaint

or request from the Attorney General.

Q Does the Commission have, from time to time, meetings where it makes determinations of its policy?

A I never assisted, nor have I ever been consulted on their policy, and I am not a member of the Police Commission. Therefore, I do not know.

Q Does this Police Commission, notwithstanding the fact that you have never participated in its meetings, from time to time isued directives, regulations, instructions to the various municipal Police Departments and other Police Departments in the Province?

A To answer you properly, the Police Act is composed of various parts.

One part of the Act refers to the Police Commission, and the Quebec Police Force, of which I am a member.

As in Section Three --

MR. IANNUZZI: This is not responsive, your Honor.

THE COURT: STrike it out. It is not responsive.

MR. IANNUZZI: May I have the question re-read?

THE COURT: Isn't all this a matter of law and interpretation of the Police Act?

MR. IANNUZZI: Not the question of whether they issue regulations or directives, sir.

THE COURT: Go ahead.

Q Does this Police Commission issue regulations, issue directives, in whatever form, whether by way of Order or Letter -- Do they issue regulations and directives to the various Police Departments in the Quebec Province.

A I can only answer insofar as the Quebec Police Force is concerned, and as far as I know, I have never received any directives from the Quebec Police Commission concerning a specific regulation or policy or whatever you want to call it concerning the operation of the Quebec Police Force.

Q Are you aware of whether or not the Police Commission in Quebec established by Police Act in 1968 has ever issued a directive permitting wiretapping by the Quebec, your Police Department?

A No, they have not.

Q When you say "they have not," is that of your own knowledge? Do you know that they have not formulated such a policy?

A I don't believe they have, for if they did, we would have a copy.

MR. IANNUZZI: Your Honor, it is not responsive.

THE COURT: Strike it out.

Q Do you know of your own knowledge whether or not they formulated such a policy -- the Board of Police Commission?

A I don't know. I have never received one.

Q And in acting in this case to undertake various wiretaps, did you consult with the Police Commission, or consult any of the regulations they may have issued concerning wiretapping?

A I did not consult with the Police Commission prior to authorizing a wiretap.

Q With whom --

MR. IANNUZZI: Withdrawn.

Q You indicated that you did confer with two other persons, however?

A Yes, I did.

Q And their positions in the Quebec Police Department is what, sir?

A Director General --

Q Now, we are talking about --

MR. IANNUZZI: Withdrawn.

Q Let me just understand, because I am somewhat confused.

The name of the Police Department in which you are particularly a member is what, sir?

A The Quebec Police Force, which is a Provincial Police Force equivalent to what you have in the States, and you call it State Police.

Q And in addition to this Provincial Police Force,

there are many other Police Forces, within the Province?

A There are.

Q And you conferred with two other persons, one of whom is the Director the Provincial Police Force?

A The Director of the Quebec Police Force.

Q And who is the other one?

A And the other, the Minister of Justice.

Q Are either of these gentlemen on the Police Commission?

A No.

Q Did either of them consult with the Police Commission to determine the policy of the Police Commission concerning wiretapping?

A I am not aware if they did.

Q Would it be fair to indicate if yourself and these other two persons determined the propriety of wiretaps in this case without consulting with the Police Commission?

A My Director General of the Quebec Police Force determines the policy insofar as wiretapping is applicable in my Force.

Q And did this Director General determine the policy of wiretapping in your Force in consultation with the Police Commission.

A I don't know, and I don't believe he did.

Q And inasmuch as you are not aware of the directives of the Police Commission, you are also not aware that the determination by the Police Director is in compliance with the Police Commission?

THE COURT: You are assuming that the Police Commission has authority of wiretaps. That's the problem. That is a matter of law..

Do you have any law on it, Mr. Iannuzzi, instead of asking a witness who has no knowledge of any such enactment?

MR. IANNUZZI: I suggest that it is the requirement and obligation of the Government in this case to establish the fact that there was none such, or was such.

THE COURT: Unassailed and standing as it is, Mr. Patenaude's testimony that the Director General has authority over wiretaps will suffice.

We will spend a lot of time finding out what Mr. Patenaude doesn't know about the authority of the Police Commission.

MR. IANNUZZI: Yes, sir.

Q Did you, sir, in any fashion, have anything to do with the actual recordings in this case?

A No, I did not.

Q Did you ever listen to the original recordings

in this case?

A Yes, I did.

Q Now, these recordings were undertaken by automatic machines, sir?

A I will leave these questions to be answered by the technician that performed the technical aspect of wiretapping. He is present here as a witness today.

MR. IANNUZZI: Would your Honor instruct the witness to answer my questions, please?

THE COURT: Try to answer the questions to the best of your ability.

Were these automatic electronic devices?

THE WITNESS: Yes, they were.

Q And at the time these machines were allegedly recording conversations, was anyone present at the place where the recordings were made?

THE COURT: While they were being made?

MR. IANNUZZI: Yes.

THE COURT: To your knowledge.

THE WITNESS: To my knowledge, I believe they were.

Q Do you know where, sir, the various machines recording the various projects were located?

MR. PUCCIO: I am going to object to the actual locations of machines other than machines that were lo-

cated at the Police Headquarters in Quebec, and the basis for the objection is, I believe, it is privileged information, and not especially, or not relevant at all.

MR. IANNUZZI: May I be heard, sir?

THE COURT: Is this an on-going investigation?

MR. PUCCIO: May I consult with Mr. Patenaude?

THE COURT: Yes.

Would you step down, Mr. Patenaude, and talk it over.

Mr. Landry might be able to advise you on that.

(Pause.)

MR. PUCCIO: Your Honor, if I may, there are nine separate projects or wiretaps which we are concerned with here, and the record ought to reflect the names; Vegas 1-B, Vegas PT --

THE COURT: I have it --

MR. PUCCIO: (continuing) 3, 5, 7, 8, 9, 11 and 12.

There will be testimony later concerning how the actual interceptions were made, and how the recordings were made in this case.

With respect to Vegas 1-B, and Vegas PT, the tape recorder was located in an apartment referred to as an observation post, and, by the way, this apartment would

be in the vicinity of a telephone pole, where the interception was made, where the line was intercepted.

We would assert a privilege with respect to the two apartments that we used for Vegas 1-B, and PT, or it may be the same apartment.

THE COURT: What kind of privilege is that?

MR. PUCCIO: In believe, in discussing this with Mr. Patenaude and his associates this morning, that often citizens cooperate with the Police Department, and make an apartment available for the Police Department to put in an observation post.

It seems to me that the actual location of this observation post is not itself relevant, and the disclosure of the actual locations would only serve to either embarrass or cause intimidation toward the people who cooperated with the Police Department.

In other words, it is a confidential matter, and the people, I am sure, who make such apartments available don't want their names made public, and I would appreciate it if their identities and the locations of the apartment or apartments were kept undisclosed.

With respect to the other seven projects, the actual recorders were located right in Police Headquarters, and that would be the location.

It is just Vegas 1-B and PT that we would like to keep the location undisclosed.

THE COURT: What is the relevance of the inquiry?

MR. IANNUZZI: If your Honor please, the relevance is as follows:

We have automatic machines. We do not have human beings recording or monitoring the conversations.

We have tapes that are placed there for twenty-four hours. They record automatically.

Take an example of someone taking a tape off, and putting a different tape on somewhere in the middle of a day or even in the middle of a conversation, possibly, where the machine stopped. Someone changed it. Who had access to these machines? I don't suggest it is confidential or a matter of security where we are dealing with evidence and trying to establish the integrity and authenticity of same.

Who knows who touched the tapes, changed the tapes? Suppose it is in the basement of a building, and someone comes and changes the tapes, interferes with it, touches the machine, and it rewinds and comes forward again.

Perhaps there are two voices, one voice --

MR. PUCCIO: May I consult with Mr. Patenaude?

THE COURT: Yes.

(Pause)

MR. PUCCIO: Your Honor, could we have a few minutes? Maybe we can work around this.

THE COURT: I will be back on the bench at five after 11:00, and I expect all counsel to be in the courtroom at that time.

(Recess taken.)

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(After recess.)

H E R V E P A T E N A U D E , having been duly previously sworn by the Clerk of the Court, resumed and testified further as follows:

MR.PUCCIO: Your Honor, I have discussed the matter with Mr. -- I don't see -- Oh, yes -- I discussed the matter with Patenaude and with Mr. Landry and their associates.

This is essentially the problem with respect to Vegas 1-B and PT: A room was rented and paid for by the Quebec police force and in the room the recorders were located for those two projects.

Mr. Patenaude and others feel that if the actual locations were disclosed the person responsible for renting that room to the police force would be in some danger so for the time being -- by the way, I understand that the police force put their own double locks on the room and it was really under their control and there was no interference.

THE COURT: Is that what the testimony is? Then I find that the location is totally irrelevant to the inquiry.

If the evidence indicates that the recording equipment was not secure then I will hear argument on

it.

MR. PUCCIO: We will attempt to re-evaluate this treat and if we feel that the person whose name would be disclosed is not any longer in danger --

THE COURT: You know how I feel about these things: When in doubt, give it to the defendant. Totally meaningless but an argument to be made later on.

MR. PUCCIO: I feel the same way but we'd like to, at the present time, withhold the identity.

With respect to the other seven, they were at headquarters.

MR. IANNUZZI: Did your Honor indicate that we can ask with respect to the ones not in headquarters?

THE COURT: No. I say, if the witness testified that they were secured, then I think it is totally irrelevant as to where they were.

I don't think it is relevant even if they were not secured but the relevance is more apparent if the witness' testimony is believed.

I know the argument that can be made. We can bring these persons down to disprove it. But, of course, Pittman and Canna are not supreme in this court so I don't know how that can be done.

I will sustain objection at this point as to where the two recording machines were on Vegas 1-B and PT.

Q In reference to the machinery used for 1-b and PT, was this equipment in a room, if you know?

A I authorized the rental of the room but I at no time went to this particular location myself.

THE COURT: Was it a room in an apartment?

THE WITNESS: It was a rooming house, your Honor, in which there was possibly four or five different small apartments which were rented out and the police force rented one.

THE COURT: Was the one room separate and apart from all the other rooms?

THE WITNESS: Oh, yes, completely separate.

Q You indicated that you at no time went to this location?

A No, sir.

Q It would be fair to say, sir, that you did not at any time see the equipment in that particular location?

A I did not.

Q You did not at any time attend to the operation of the equipment in that location?

A I did not.

Q You did not at any time attend to the changing of tapes in that location?

A I did not.

Q You at no time overheard any conversations at the moment of their being recorded at that location?

A I did not.

Q Did you change the locks on that location?

A I did not.

Q Did someone?

A My subordinate personnel in charge of that particular operation handled all the physical requirements of the operation.

Q So that as to the physical requirements of the operation you have no personal knowledge?

A I do not have any personal knowledge other than knowing that one was installed at PT and 1-B.

Q And when you indicate you have knowledge they were installed, in fact, you do not know that they were installed in that particular location of your own knowledge, just from what other people tell you?

A Well, actually, I authorized the various payments that were necessary.

I also was able to listen to some of the taped conversations recorded from that particular location.

I also had to at some point in time, organize the use of vehicles and sign various forms for administrative controls in the police force and for the people that went out to check on these operations and maintain them in proper working order.

Q But as to your own knowledge and your own observations or perceptions, despite the fact that you signed forms and paid bills, you did not ever see the actual tapes in the particular location that they were supposedly in?

A I did not.

Q And you did not ever see anyone take a tape from there which you thereafter listened to?

A I never saw any of the tapes from those particular recordings up until the time they arrived in my office.

Q And you don't know of your own knowledge where they came from, in fact, other than what other people told you?

A These, according to our records, these tapes came from operations Vegas 1-B and Vegas PT.

Q But other than the records that were compiled by other persons which you merely read, you have no knowledge of your own perception of observation if these tapes came from the place they were supposedly to come from?

A My duties do not call upon me to go out and perform the physical work.

MR. IANNUZZI: May we have an answer that is responsive, your Honor?

THE COURT: You did not go out and see the tapes?

THE WITNESS: I didn't. I made that reply already about ten times.

Q That would be the same for both Vegas 1-B and Vegas PT?

A Yes.

Q And in connection with the room and the security on the room, you did not ever participate physically in undertaking that yourself either?

A I have already stated I had not anything to do with it.

Q Now, in reference to other automatic equipment --

MR. IANNUZZI: Withdrawn.

Q Who was it that physically secured these rooms, if youknow?

A At that time it was a combined effort by, so far as I can recall, Corporal Claude Lavallee and Corporal Bernard Coutere.

Q Now, is it your testimony, sir, that either of these gentlemen, one of them or both of them actually secured the room?

A These are the two gentlemen that participated in the physical work. Therefore, I logically deduct that they took care of the security of the room.

Q Is it your testimony therefore that you do not know of your own knowledge who secured the room?

A Of my own knowledge, it cannot be anyone but these people.

Q When you indicated that, that is based on an assumption?

A Because I had assigned them to this particular type of work.

Q Other than the assignment, do you have any other knowledge that they themselves personally completed the work -- of your own knowledge?

A I cannot give you an answer. When the witnesses appear they will probably be able to answer your question.

Q And in reference to the other Vegas projects, other than 1-B and PT, in connection with the present case, where were these machines located, if you know?

A They were located at the Quebec police force headquarters, 1701 Pontenesse Street, Montreal.

Q That would be all of the machinery?

A Yes.

Q Was the assistance of the Bell Telephone Company

employed to set these up?

A Never.

Q Was the Bell Telephone Company consulted concerning the same?

A Never.

Q Was the Bell Telephone Company in any fashion compensated for the use of their wires?

A Not unless we rented a line.

Q In connection with the telephones that were tapped, did you rent any of those lines?

A Yes, we rented lines.

Q Is it your testimony that the telephone wires that were tapped, that is to say, the particular line that was tapped was rented and paid for by the police department?

A The particular line that was tapped?

Q Yes.

A You mean the subscriber's line?

Q Yes.

A We never paid for any subscriber's line.

Q When you tapped into these lines did you pay the Bell Telephone Company in any fashion for the use of their equipment or lines?

A I just told you, not unless we leased the line.

Q Which lines did you lease in connection with

any of the Vegas projects?

A The private and ordinary telephone line.

THE COURT: Lines coming into your police office?

THE WITNESS: Yes, your Honor.

THE COURT: I believe the question relates to the lines you tapped.

You see, there is a statute and that is what Mr. Iannuzzi is referring to, that makes it a misdemeanor to steal services from the Telephone Company, to use the Telephone Company lines without paying for them.

THE WITNESS: We never did.

THE COURT: So, you never paid for any of the lines you tapped or the use of those wires, did you -- the use of the tapped wires, the subscriber's wires?

THE WITNESS: Well, your Honor, I think my technician will thoroughly explain the method employed by the Quebec Police Force for wiretapping and I would much prefer that he answer that question.

THE COURT: But you were the dispersing officer?

THE WITNESS: Yes.

THE COURT: You are saying that you tapped one of the defendant's lines?

THE WITNESS: Yes.

THE COURT: You never paid the Telephone Company for the use of those wires, did you?

THE WITNESS: When a tap was made and diverted to my office, our office at 1701 Parthene Street, whatever services were required or wires were required to transport the interceptions, they were paid for to Bell Canada.

THE COURT: I see.

Go ahead, Mr. Iannuzzi.

Q Do you have a record of that, sir?

A Some of them we have, some of them we don't because on account of our destruction of document records, some may be gone with the destruction process and that's all I can say.

MR. IANNUZZI: I call, if your Honor please, for the production of the records as to the alleged payments to Bell Telephone.

THE WITNESS: If available.

MR. IANNUZZI: Of course, and if not, I'd like to know which ones are not available and who destructed them.

MR. PUCCIO: No objection, if they are available.

THE COURT: Would they just be part of your monthly bills that you got from Bell Telephone?

THE WITNESS: It depends. It is billed to a specific account.

THE COURT: The taps are billed to a private account, another account?

THE WITNESS: If I might explain to your Honor, the Quebec Police Force has a considerable communications service, not only on telephone but on police radio systems as well as computer systems and this is by Government contract.

Ones done and controlled by the Special Investigation, what we call the Scientific Research Department, are billed on separate accounts and our normal administrative process dictates that after "X" number of years, certain of our -- in other words, not to accumulate too much storage space, a lot of the documentation processed and presumed of no further requirement is automatically destroyed, accordingly, pursuant to Police Force policy.

THE COURT: Mr. Puccio, make every effort to obtain proof of payment for these wiretaps.

MR. PUCCIO: It would just be --

THE COURT: The seven.

MR. PUCCIO: Vegas 3 through 12. There would be a telephone line rented and paid for.

THE COURT: We understand 3 through 12 leaves out 6 and 10.

MR. PUCCIO: Yes.

Q In connection with these, with these taps on PT 1 -- I'm sorry -- on PT and 1-B, Vegas PT and 1-B, was the Bell Telephone Company compensated for the use of their wires on those two taps?

A I would have to verify the records to answer this because this goes back well over five years and I don't recollect offhand.

Q Would you be able to consult your records and then answer?

A If they are available, mind you.

Q Yes.

A I think you will understand my reply that according to our disposal process of documentation, I don't know.

(Continued on next page.)

Q And if you don't have them you would not be able to tell whether or not in fact they were paid for?

A Well, through our accounting system we may be able to determine something, we may not have the official documentation or receipt of accounts, but we might be able to find out some indenture in our administrative process where we might be able to accommodate --

Q But at this time you are not able to testify?

A No, at the present moment, no, it requires a --

Q In reference to the taps on the Vegas Project, when you say you paid for your equipment, is that equipment which in general is rented by the Police Department, your Police Department?

A The recording equipment, you mean?

Q No, no, sir. Let me perhaps rephrase the question.

When you indicated that you would pay Bell Telephone for the use of the wires that you used in these wiretaps, is that on a specific basis, for instance, if a particular phone under Vegas 3 was tapped, and apparently it was tapped from the location -- withdrawn.

Let me ask this: These machines were located in Police Headquarters and a wire was run from Police Headquarters to some terminal point which was connected to the phone that

was tapped; Is that correct?

A Right.

Q And is it your testimony that the -- withdrawn.

Now, when this wire was run from Police Headquarters and connected to the telephone that was being tapped, that was not of course something that was in existence before the tap, correct?

In other words, you didn't have a wire running to Mr. Catroni's phone prior to the tap being made, correct?

A We rented a phone that was installed and that --

Q May I ask --

MR. IANNUZZI: If your Honor pleases, that is not responsive.

THE COURT: Strike it out as not responsive.

Q At the time that Mr. Catroni's phone was tapped, prior thereto, prior to that point, you didn't have a wire running to Mr. Catroni's phone and connected; is that correct?

A Oh, definitely not.

Q Now, at the time that the Vegas 3 Project was authorized by yourself, a wire therefore had to be run from Police Headquarters to the particular phone, somewhere, or to a terminal or to a central office of the Telephone Company?

A No, sir.

Q Let me ask this: The connection that was made

onto the phones of Vegas 3 and the various other numbers, were these done through the Telephone Company's central offices?

A No, sir.

Q Were they done directly to wires of the Bell Company?

A They were, the interception was made from the pair of the subject to be tapped onto another pair which we rented from the Bell Telephone, and for which we paid and which would eventually get into our headquarters on Parkenese Street by going through the communications system as installed in the City of Montreal.

THE COURT: So you rented the tapping equipment, in effect?

THE WITNESS: No, your Honor.

THE COURT: The repair of wires?

THE WITNESS: All we rented from Bell Canada was a pair of wires in a specific area which they terminated by a normal operating telephone, and from there our technicians, through the various devices, made the necessary connections which eventually brought the intercepted communications, wherever we wanted to tape, back through these wires and into our office, and through the various central offices in the City

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of Montreal.

THE COURT: Didn't you say that from the tap to the recording device in your office your lines were used?

THE WITNESS: Well, our lines because we rented them from Bell.

THE COURT: These were your rented lines?

THE WITNESS: The rented lines.

MR. PUCCIO: Your Honor, there will be a gentleman who will give all the technical explanations of how this entire thing was done.

THE WITNESS: I am not too conversant with this.

MR. IANNUZZI: ean I proceed, sir?

THE COURT: Yes.

BY MR. IANNUZZI:

Q Now, Mr. Patenaude, you indicated that you used a pair of lines that were -- withdrawn. A pair of wires, actually, that were connected with the phone to be cut, and these were connected to a pair of wires that you rented from the Telephone Company; is that correct?

MR. PUCCIO: I am going to ask, your Honor, that that question be rephrased.

THE COURT: If you can't answer it, say you

can't answer it in that form.

THE WITNESS: I would prefer to let that question be answered by the technicians.

THE COURT: If you can't answer it because it is not within your expertise, then say so.

THE WITNESS: It definitely is not, your Honor.

THE COURT: All right.

THE WITNESS: I am the administrator of the unit.

THE COURT: This witness cannot answer the question.

THE WITNESS: I cannot answer that question.

BY MR. IANNUZZI:

Q This phone that you said that you paid for from the Bell Telephone, this was specifically a line that was rented by yourself for this specific project?

A Yes.

Q And was the Bell Telephone advised of the fact that the purpose of the telephone was to connect into someone else's line?

A They were not.

Q So that when you rented this line, it would be as if it were a private telephone that you rented?

A Right.

Q And then you thereafter with your technicians and without the knowledge of the Bell Telephone connected it for the purpose of tapping somebody's phone?

A Right.

Q At the time that you indicated to Bell Telephone that you wanted to rent this line, did you indicate what purpose you were going to use it for?

A No, we did not.

Q Did you indicate to them or did they understand, if you know, as a result of your informing them that it was a private wire to be used by the Police Department?

A I think the Bell Canada in Montreal is interested in renting communications and as long as they are --

MR. IANNUZZI: I object, this is not responsive.

THE COURT: Strike it out as not responsive.

MR. IANNUZZI: Your Honor, will you be kind enough to advise the witness to merely answer questions and not supply gratuitous remarks.

THE COURT: Try to answer specifically.

MR. IANNUZZI: This is just for the purpose of expedition.

THE COURT: For expedition, I think if we would just disregard it it will be a lot quicker.

MR. IANNUZZI: Very well, sir.

Q And would it be that your representation to the Bell Telephone Company in renting this line was for the purpose of private use and ordinary use of a telephone?

A You just put in an order for the installation of a private telephone and they put it in.

Q And when you order --

A They never asked any questions.

Q Sir, when you ordered a private telephone to be installed for ordinary purposes, was it therefore connected to the central office of the Telephone Company?

A I am not familiar how Bell, Canada operates its communications system.

Q Well, when the phone was installed, it wasn't as if -- when you say --

A It was an order.

Q Sir, I didn't ask you.

A For a private phone.

Q Please, I didn't ask you that.

When you ordered this telephone to be used as a private wire, it was an operational functional telephone then?

A Oh, yes, it was.

Q So therefore the wires, the ends of the wires connected to the Bell System and not to any phone of

Mr. Catroni or anyone else; isn't that correct?

A It went through the normal Central Offices.

Q And thereafter your technicians diverted its direction from the Bell Telephone to also connect with Mr. Catroni?

A Right.

Q Therefore the wire from your phone to his phone was in addition to that which you rented from the telephone company?

A Would you repeat that again, please?

Q Certainly.

When you asked for this phone to be installed and in fact it was installed, it was not by the Bell Telephone connected to Mr. Catroni's wires or anybody else's wires, it was installed and connected to a General Office of the telephone company; correct?

A Right.

Q And that is what you paid them for; is that correct?

A Yes.

Q And the connection from the telephone company equipment to Mr. Catroni's equipment was not installed by the Bell Telephone.

A No, it was not.

Q And it was not paid for?

A No, it was installed by our own technicians.

Q And it was not paid for as if it were authorized equipment of the Bell Telephone Company?

A No, it was not.

Q And when the signals came in over this wire from Catroni, it was not over the connections supplied by the Bell Telephone but rather your own connections?

A That is right.

Q You are not attempting to testify that you paid the Bell Telephone for the interconnections between your line and Catroni's?

A We never paid Bell, Canada for anything else but the renting of a private communications line.

Q An ordinary telephone?

A Right.

Q And this is the same on all the phones, on all the phones of the Vegas project?

A Yes, sir, I would say so.

Q On all the phones you rented a private wire, that was an ordinary telephone; correct?

A Except possibly the 1-B and the PT which our technicians --

Q With the exception of 1-B and PT.

A Right.

Q All of them were erected as ordinary telephones and set up as ordinary telephones?

A That is right.

Q And they were paid for on that basis?

A Yes.

Q And the connection from that line supplied by Bell to the Catroni line was your own installation?

A Right.

Q You are aware of the Bell Telephone Act?

A Yes, sir.

Q You are aware of the fact that the Bell Telephone Act makes it a misdemeanor pursuant to the Bell Telephone Act to in any fashion interfere with the lines of the Bell Telephone Company?

A I am not a member of the bar, but I have --

Q You are aware of the Act, aren't you, sir, as a police officer?

A I know of the Bell Telephone Act, this is a private Act, and there --

MR. IANNUZZI: If your Honor pleases, may we have an answer?

THE COURT: The objection is sustained.

You asked for your interpretation of a statute.

Now the witness has declined to express an opinion, he said he is not qualified.

MR. IANNUZZI: Very well.

Q You are, however, as a layman and as a police officer aware of the Act?

A Yes, but I never enforced it.

Q And do you have any regulations in your police department that indicate that the Bell Telephone Act does not apply to policemen?

THE WITNESS: I would like to answer, your Honor, that insofar as this particular question is concerned many legal studies have been made concerning the applicability of the Bell Telephone Act insofar as the use of wires and wiretappings and as it concerns the Canadian police departments.

There are a number of judgments that have already been rendered public in this matter, I don't have them, but possibly the attorneys could make them available to the Court.

MR. IANNUZZI: I would call, if your Honor pleases, for the production of these studies that the witness has just mentioned.

MR. PUCCIO: May we have a minute?

THE WITNESS: There are a great number of them.

THE COURT: Do you have any in your papers there?

THE WITNESS: Yes, your Honor, here, I have one, here is one.

I think these have already been produced.

THE COURT: Do you have an opirion, a judgment or a study?

THE WITNESS: A judgment and a study and opinions, I believe there are quite a number of them.

Here is a copy of an opinion in Her Majesty the Queen versus Barton Royal Lesargue.

THE COURT: Are you talking about studies by legal experts?

MR. PUCCIO: Your Honor, that opinion is included within the materials which we have already handed up.

THE COURT: Yes.

Suppose you permit counsel to look through his documents.

MR. IANNUZZI: I have it, sir, and I have looked through it.

THE COURT: Will you mark it?

THE CLERK: Marked for identification as the case of Her Majesty the Queen versus Barton Royal

Lesargue.

MR. IANNUZZI: May I respectfully comment that the case of Her Majesty the Queen versus Barton Royal Lesargue is merely a determination of General Sessions of the Court, in other words it is similar to what we had in General Sessions in the state court here, and I suggest, sir, that this is of no consequence in that it is not the high court or the appellate court.

THE COURT: Do you have any high court opinion which says a tape by the director general of the Quebec police department violates the Bell Telephone Act?

MR. IANNUZZI: I have the Bell Telephone Act.

THE COURT: You said this is not the opinion of the highest court of Canada, do you have an opinion of the highest court of Canada that states what the law is?

MR. IANNUZZI: I have the law.

THE COURT: I read that.

MR. IANNUZZI: I don't have a high court opinion, sir, but I would suggest --

THE COURT: Do you have a low court opinion, do you have any opinion?

MR. IANNUZZI: May I suggest this, then, for

the moment:

The difficulty with the opinions of the Canadian courts is as follows, and this is the difficulty that we are going to get into on the legal question in this case:

The Canadians have laws against wiretapping, including the Bell Telephone Act, and then there is the Quebec Telephone Act, and there are various other criminal acts which make it felonies, that is the theft of telephone communications, and they are valid law in the provinces and in the country, they are on the books of law. There have been in fact people who have been arrested, people, even policemen, who have been placed under warrant for telecommunications theft, et cetera --

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THE COURT: For authorized telephone taps?

MR. IANNUZZI: There are no such things as authorized telephone taps. Our problem in discussing this, and the problem that was had here on the 11th of November when discussion was had, is simply this, sir:

The Canadians have a law against it, but they also have a procedural determination in their Courts that they will use any evidence, legal or not, so when the Courts rule, they say, It is unimportant whether it was illegal or not, we will use it anyway.

I suggest that this is not the law of the United States, and that we are going to run into that problem. The Canadians, whether it is illegal or not, will accept it as admissible in Court, and I suggest that I have the cases, and that even Mr. Puccio will say that this is so. In other words, they will use anything, they don't care whether you break into a home --

MR. PUCCIO: Well --

MR. IANNUZZI: May I finish, sir?

THE COURT: Will you please do that.

MR. IANNUZZI: So therefore when we have cases that indicate that the wiretap is admissible, it is admissible regardless of its illegality. I am not questioning their procedure to accept illegal evidence, but

we cannot be therefore bound by the Court's determination that it was admissible. The question is its illegality, and I suggest, if your Honor pleases, that the citations given by the United States Attorney, for instance, Reginar versus Peirson, which was handed up previously, and Copeland and Adamson are all cases where it was admitted in evidence despite its illegality.

I suggest that that is not the situation here, and I am asking this Officer if in fact it is illegal, because I suggest, if your Honor pleases, that the Courts of the United States have for a long time not countenanced illegal evidence, Canada does.

So we have to decide here between the illegality and the admissibility as far as Canada is concerned.

When I asked the question, Is there a Telephone Act that makes it illegal, I cannot give you a case where the Canadian Courts will say, Yes, it is illegal, and inadmissible, because they admit it.

So I think it is almost a case of first impression, as far as we are concerned, even on the Canadian law, because of the particular and peculiar position of the Canadian Courts.

If your Honor would permit me just a moment, I will refer specifically to the case, or to one of the

cases in question. These items, by the way, were interpreted by the various Courts, but always with the ultimate conclusion, It is admissible in Canada, therefore we are not even going to pass on it; they have even said in decisions that this is obiter dictum, it doesn't mean anything, because we are going to use the evidence anyway.

THE COURT: Are you finished, Mr. Iannuzzi?

MR. IANNUZZI: Yes, sir.

THE COURT: Now, I asked you one question:

Do you have any opinion of any Court of Canada which says wiretapping, and authorized wiretap by a Police Officer, violates the Bell Telephone Act?

MR. IANNUZZI: I will look for it, sir, I don't have it while I am standing right here this moment.

THE COURT: You have Canadian counsel here, maybe you ought to consult with him.

What you are telling me is that they have never reached the question, and they have said that even though it is an illegal act, it is admissible in evidence?

MR. IANNUZZI: Yes, sir.

THE COURT: You asked this witness to supply an opinion which says it was legal, I am asking you to supply -- He is not a lawyer, you are -- I am asking you

to supply an opinion which says it is illegal.

MR. IANNUZZI: I have just suggested that in the case of Copeland and Adamson, re Copeland and Adamson, and I am looking specifically for the Regina-Pierson case, but they do indicate in the determination that the Court stated that the method of obtaining the evidence did not affect its admissibility, so they never get to the point --

THE COURT: That is not the question I asked, I asked you if there is a single case in any Court of Canada which you can point to which says, Authorized wiretaps by a Police Officer violates the Bell Telephone Act, authorized as this was by the Director General of the Quebec Police Force.

MR. IANNUZZI: To answer the question directly, I don't have a case here specifically saying that, and I suggest the reason is because they never get to that question, unfortunately, so I cannot give you a case. They always decide that the method of obtaining the evidence is immaterial as to the question of admissibility.

THE COURT: All right.

You answered the question, Mr. Iannuzzi.

MR. IANNUZZI: Yes, sir.

THE COURT: Now we departed from the examination

because the witness said there were studies made by legal experts.

Now have you found any such studies?

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MR. PUCCIO: Your Honor, I believe the witness is referring to the Court decision. Mr. Landry points me to the same case, Ray Copland and Adamson, and I believe this is the point on which this decision took off. In Copland and Adamson, which is a mandamus where someone was seeking to prevent the police from conducting wiretapping, the Court --

THE COURT: What number is in my --

MR. PUCCIO: It's No. 42. The Court specifically finds in this case, your Honor that wiretapping is not a violation of the Bell Telephone Act. That's on Page -- starting at the bottom of Page 399, and running onto Page 400 of Ray Copland and Adamson.

MR. IANNUZZI: What page of the decision?

MR. PUCCIO: I already said that, Mr. Iannuzzi. It's Page 399 and 400. There the Judge says, your Honor, quoting from the -- I believe it's the third paragraph. "I do not believe wiretapping, which does not impede the conversation between the parties, nor impedes its progress, can form a breach of such section."

THE COURT: This is the Supreme Court?

MR. PUCCIO: This is the -- is this Regina against Pearson?

MR. PUCCIO: Copland versus Adamson.

THE COURT: On what page does it start? Oh, I have it here.

MR. PUCCIO: This is a --

THE COURT: What page is that at?

MR. PUCCIO: The discussion that I --

THE COURT: I want to know what Court decided it. Ontario Court of Justice?

MR. PUCCIO: Which I understand is a Federal Court similar to this Court, your Honor.

THE COURT: Is it a Court of Original Jurisdiction?

MR. PUCCIO: Yes, it is.

THE COURT: It is not an Appellate Court?

MR. PUCCIO: No, there is an intermediate Appellate Court and then the Supreme Court of Canada.

THE COURT: Page 399?

MR. PUCCIO: Starting at the bottom of that page, your Honor, the Court quotes the Bell -- the section of the Bell Telephone Act, which I believe Mr. Iannuzzi referred to, and goes on to say that

the wiretapping is not a violation of that Act.

THE COURT: Page 400. "I do not believe that wiretapping which does not impede the conversation between the parties, nor impede its progress, can form a breach of such section because the material before me does not indicate that the audio surveillance creates any disturbance of the conversation."

MR. PUCCIO: We would submit that that is the same situation here, no disturbance of the conversation was created.

MR. IANNUZZI: That is a determination of fact, if your Honor please, not a determination of law. I suggest --

MR. PUCCIO: I am only making an offer of proof with respect to it.

THE COURT: You said, that there is no Lower Court opinion which holds that the authorized police interception of wiretap does not violate that particular section of the Bell Telephone Act. Here is one, isn't it?

MR. IANNUZZI: If your Honor please, I distinguish this case.

THE COURT: Well, there is also a distinction. But is it a material one, a significant one?

MR. IANNUZZI: Certainly.

THE COURT: Why don't you wait to see what facts I find here before you claim that there is a difference.

MR. IANNUZZI: Very well. I can do that. I just asked in reference to the Bell Act. I may suggest, by the way, if your Honor --

THE COURT: I understood you to say a police officer can never have a lawful tap because it violates the Bell Telephone Act.

MR. IANNUZZI: Yes, sir.

THE COURT: That's what you are saying?

MR. IANNUZZI: Yes, sir.

THE COURT: Here is one exception.

MR. IANNUZZI: If I may just refer to that, the Court in the case first of all-- the paragraph in reference to this is -- well, the entire decision goes into much detail concerning because it was Ontario, but it's similar to Quebec, the Quebec or Ontario Telephone Act, but that had only to do with divulsion of information. In getting to the --

THE COURT: Mr. Iannuzzi, at the right moment I'll hear extended argument on the question. You can try to distinguish that case from this. But

even though it's the Court of Original Jurisdiction and not the Highest Court, you must agree that it's a citation on -- in support of the government's claim here.

MR. IANNUZZI: May I suggest this, sir, perhaps to just answer your Honor's question, the Court acknowledges the existence of the Bell Act. In acknowledging it, it also acknowledges the fact of the language of the Act in which it says, "Any person who shall willfully or maliciously injure, molest or destroy any of the lines, posts or other material, property of the company, or in any way willfully, obstructs or interferes with the working of the said telephone lines, or intercepts any message transmitted thereof shall be guilty of a misdemeanor.

Thereafter, in the next paragraph, it goes into the English dictionary and says. what does the word intercept mean and it says, your Honor, the Lower Court determined that intercept means, interfere with. That was that Court's determination. I didn't say the law doesn't say you cannot interecpt wiretap, it says, in my opinion that means only interfering with the quality of the use.

Then the Court says, I don't believe that these wiretaps interfered with the quality.

THE COURT: All right, Mr. Iannuzzi, let's continue the examination, please.

I will read the case in the solitude of my chambers by myself and make my own interpretation of the case.

When you talked about studies, are you talking about anything in writing besides Court opinions interpreting the Act, or were you referring only to opinions interpreting the Act?

THE WITNESS: Your Honor, I have here a copy of a memorandum that was prepared by the legal advisor of the Quebec Police Force which is addressed to the former director, Mr. Maury St. Pierre, unfortunately it is in French. I could have it translated if you so wish, your Honor.

THE COURT: What do you say it says?

THE WITNESS: It says that wiretapping is not an offense against the Bell Telephone Act.

THE COURT: Mark this for identification. You will see that it's translated.

MR. PUCCIO: Maybe I can help translate it now?

THE COURT: All right.

THE CLERK: Marked Government's Exhibit No. 4.

(So marked)

THE COURT: Mrs. Menza, will you please come up. You interpret French and Spanish, and what other language you told me?

MRS. MENZA: Catalan.

THE COURT: Who speaks Catalan, Catalonians?

MRS. MENZA: Only people who live in Catalonia, which is the northeast of Spain, a few million people, not many.

THE COURT: You come from there, right?

MRS. MENZA: Yes, sir.

THE COURT: All right. Now that you are qualified as an interpreter in the French language, could you please read that Exhibit 4?

MR. PUCCIO: Can Mrs. Menza have a minute to look at it first, your Honor?

THE COURT: Yes. Mr. Andre, if you think that you can translate it -- suppose you do that, Mr. Daup.

Let the witness do it. He's under oath, let him testify as to what it says.

MR. PUCCIO: It didn't occur to me, your

Honor.

THE COURT: I just thought of it.

THE WITNESS: I came pretty close to offering, your Honor.

MR. IANUZZI: May we know what this is, this in an opinion of a lawyer?

THE WITNESS: A legal advisor to the Quebec Police Force.

THE COURT: Yes. Go ahead.

THE WITNESS: Montreal, June 1, 1973. This is addressed to Mr. Maury St. Pierre, Director General, Quebec Police Force, 1701 Parenthes Street, Montreal, Subject: Electronic Surveillance.

Mr. Director: Following remarks addressed by certain members of the Bar and which were reported in the local newsper, photo police on May 12, 1973 concerning wiretapping of telephone lines by certain police forces, and after having effected some research in the criminal code of Canada, in statutory law pertinent to this subject, and other opinions expressed by specialization on this subject, we must come to the conclusion that there are no legal specific local dispositions actually existing to regulate these particular functions by Canadian

Police Forces. The Criminal Code at Section 387 and 176 issues certain dispositions that may in a certain manner make a link --"

MR. IANNUZZI: Judge, perhaps we can have the official interpreter take care of that?

THE COURT: No. I'll have the witness testify.

THE WITNESS: That may in a certain manner come close to the Acts which are being cited against the police officers in the exercise of their specific functions.

Section 387, Paragraph 1, Subsection C and D gives us certain elements which are required to determine what may be public mischief. Therefore, it seems impossible to make these elements -- to make these activities coincide with the activities of the police forces and discover the elements of public mischief as meant by the criminal code.

Insofar as Section 176, its second paragraph stipulates certain conditions to commit a public nuisance, insofar as determined by the criminal code.

We believe that the disposition of the law which comes the closest to an infraction susceptible to be committed by the police forces acting in

virtue of their mandate, which is conferred upon them in the performance of their duties.

There is a bracket there and it's wiretapping.

We have endeavored to verify the disposition of certain federal laws, such as the law on communications, the law on telegraph companies and the law on the Bell Telephone Act. -- The Bell Telephone Act. This last Act appears to us to come as being the most pertinent on the subject which is treated in this memorandum.

Section 5 of the Statutes of Canada, 1968, Chapter 81, replaced by Section 5 of the Statutes of Canada, 1967-1968, specifies that Bell Telephone of Canada must perform certain things to protect their subscribers in general and also in the exercise of their powers.

This same article gives a precision that certain things and certain acts can't be performed by the said company. However, all these obligations aren't associated in this act of any sanction.

Therefore, it is not by virtue of these acts that it will be possible to render illegal the specific acts of certain police officers.

Finally, Section 24, Chapter 286 of the

Consolidated Statutes of Quebec, 1964, prescribes a sanction for all persons who listen or divulge a message which is heard when this person is not authorized.

The listening and divulging being two conditions required, we believe that it is impossible to prove the existence that these two elements are contrary to the activities of the Quebec Police Force.

To terminate, we remark in the explanatory notes of the bill entitled Amendments to the Criminal Code, the Act respecting the responsibilities of the Crown, and the Official Secrets Act, the following text. This bill has for object, A, to modify the criminal code and create infractions having regard to the logic obliges us to deduct from these terms that no infraction existed upon the presentation of this bill. Conclusion: We do not believe that in the present state that at present laws, either federal or provision, and others that may exist, to make it an infraction the the Quebec Police Force -- here I think this has to qualify for transmission in wiretapping.

THE COURT: I didn't hear the last part.

THE WITNESS: He means to say here by

wiretapping the Quebec Police Force does not commit any offense against the statutes which he has previously stated.

THE COURT: All right. Will you give Mr. Iannuzzi a Xerox copy of that, Mr. Puccio?

MR. PUCCIO: Yes.

THE COURT: So he can make his own translation. Go ahead.

MR. IANNUZZI: Shall I proceed, sir?

THE COURT: Surely.

CROSS-EXAMINATION

BY MR. IANNUZZI: (Cont'd.)

Q Are you aware, Mr. Patenaude, of Section 287 of the Criminal Code, which makes it a felony, not the Bell Act, but the Criminal Code, that makes it a felony for everyone -- I believe the statute indicates everyone commits theft who fraudently, maliciously or without color of right, Subdivision B, uses any telecommunication, wire or cable, or obtains any telecommunication service, and 2, in this section, telecommunication means any transmission, emission of reception of signs, signals, wiring, images or sound or intelligence of any nature --

MR. PUCCIO: Your Honor, objection.

THE COURT: You are doing nothing more than

making a legal argument through asking questions of this witness who professes no expertise in the field. Sustained. I will give you all the time in the world. Maybe on a Saturday or Sunday, when I have more time, I will give you time to make all the legal argument you want, but not today. We have oral testimony to take.

MR. IANNUZZI: Very well.

Q Were you aware, sir, of Section 287 of the Criminal Code at the time that you authorized the wire to run from your private telephone wire that you paid for to the wire of, say, Mr. Catroni or Mr. Dasti?

MR. PUCCIO: I'm going to object to that.

THE COURT: Objection sustained..

Q Do you know of any section, sir, which indicates that a policeman is not subject to 287 of the Criminal Code?

A I have not made any research in this particular field and insofar as I am concerned, prior to June 30th --

MR. IANNUZZI: Objection, your Honor.

A June 30, 1974, there was no laws or anything in Canada that prohibited me from authorizing wiretaps in Canada.

MR. IANNUZZI: I object to the answer.

THE COURT: I will allow it to stand.

Q Do you know of any section, sir, that indicates that a policeman is not subject to this Criminal Code Section that I read.

MR. PUCCIO: I object to that as being asked and answered.

THE COURT: Sustained.

Q Did you confer with any of the police commission concerning the authority of a policeman to wiretap in view of Section 287?

MR. PUCCIO: I'm going to object to that.

THE COURT: Objection sustained.

Q When you -- withdrawn. Do you know, sir, whether or not the wire that you ran between your private telephone wire that you rented from Bell and a wire that was to be intercepted, or listened to, do you have any idea of the effect of the interconnection, as to whether or not it diminished the signal or the service or in any fashion interfered with the incoming call on the other end, that is, the other subscriber's end?

A I would say there was no -- there were no problems caused because the conversations always went through.

Q Did you -- withdrawn. Do you know of your own knowledge that you have listened to every single telephone conversation -- communication on that wire, when it was tapped?

MR. PUCCIO: I object as to form, your Honor.

THE COURT: Overruled. Do you know whether every single conversation on that tap was recorded? During the hours that it was on?

THE WITNESS: I don't know, your Honor.

THE COURT: All right. That's the answer.

Q Do you know whether or not in fact the tap, in any fashion, interfered with the use of that telephone? I'm not talking about your phone, I'm talking about the other person's, sir.

A I don't know.

Q Do you know whether or not in fact there were communications that were not received as a result of the interference of your wire?

A I don't know.

Q Do you know of any -- do you know of your own knowledge, in fact, whether your wire from your authorized line over the unauthorized tap to the telephone of the subscriber in any fashion impeded the progress of any

communication?

MR. PUCCIO: I object to that.

THE COURT: Objection sustained. How much longer are you going to be on this witness on matters that you know aren't within his field?

MR. IANNUZZI: I don't know that they are not in his field, Judge.

THE COURT: Isn't it obvious to you?

MR. IANNUZZI: Judge, I have no idea what this man does in reference to this thing. That's what I'm trying to find out.

THE COURT: You have witnesses down here from Canada to offer testimony, technical testimony on how this is done, whether it's interfered with, whether it's not, whose line is interfered with, whether the telephone conversations are missed because of it. But you persist in asking those questions of this witness who professes no knowledge of those things. You have lawyers here to testify as to the law of Canada, but you insist on asking this witness as to the law of Canada. Do you think I'm going to take his word as to the law of Canada?

MR. IANNUZZI: Certainly not.

THE COURT: Then why ask him the questions?

MR. IANNUZZI: I want to know his awareness at the time he authorized the statutes.

THE COURT: Next question, Mr. Iannuzzi. This was just a short cross-examination, unfinished cross-examination of this witness on certain subject matter.

BY MR. IANNUZZI:

Q Mr. Patenaude, do you know who removed the tape from all of the machines in the Vegas project that were in the police headquarters?

A All Vegas projects were assigned to Corporal Coutre and Agent Aube of the Quebec Police Force, and they are the two members of my force that handled the specific assignment of removing the tapes, making the locks and replacing a fresh tape on the machines.

Q Is it your testimony that these are the only two people over the entire course of the Vegas project, who ever removed the tape from the machines?

A These fellows were specifically assigned to that particular project.

Q Is it your testimony of your own knowledge, that these were the only two people --

A As far as I know, yes.

Q Well, are they on duty seven days a week?

MR. PUCCIO: I'm going to object to this. The witness says as far as he knows, and I object to any further question as argumentative and repetitive.

THE COURT: Are they on duty seven days a week, 24 hours a day, because that's the next question, you know?

THE WITNESS: Your Honor, these members in that particular time frame we are talking about, one, December '70 to January 31, 1971, both these members, I do believe worked seven days a week and they were putting 16 to 17 and 18 hour days.

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CROSS-EXAMINATION

BY MR. IANNUZZI (Continuing):

Q Can you testify, as a matter of fact, that no one touched the wires, the machines?

A No, I cannot.

Q Very well.

Now, when these tapes were taken off the machine or however they were taken off the machine and by whomever they were taken off the machine, they were thereafter played for the monitoring of the conversations that might be contained thereon.

Would that be what they did, these two men, or someone else?

A These two men, Sergeant Aube and Corporal Couture, were specifically charged with these two projects and they handled everything from beginning to end.

When they removed a tape they made the audio portion, made they logs and typed up their logs.

Q Were they the only persons who took the tapes and placed them on playback machines?

A It was their specific assignment.

Q Are they the only ones, to your knowledge, who put the tapes on playback machines, and if you don't know, say so.

A To my knowledge, they are.

Q You don't know if anyone else did, however?

A I just said, to my knowledge, they are the only two that operated the machine.

They did their whole -- they handled the whole complete project.

Q Very well.

And, you did not, at any point listen to those tapes at that time?

A On many occasions I listened to the playback of those tapes.

Q Would that be in the original form, sir, or after they were made into a dub?

A Sometimes in their original form and sometimes when they were in dubs.

Q Do you have any records, sir, of the tapes which you listened to in the original form and those which you listened to as dubs?

A All these conversations which we have supplied I listened to the greater part of them.

Q The question is, do you know which ones you listened to in the original form, that is, the tape from the machine that took the conversations, allegedly, or the one that had been placed onto the master tape.

A At that particular time -- and I stated in my previous testimony -- whenever a recording was made and the audio people, that's these two members, came across some bit of conversation that was of interest in our information-gathering process and particularly when the conversations were in English, they would call upon me for assistance or verification.

I have listened to the major part and as a matter of fact, although I -- it is quite difficult, this is five years ago -- I believe that I have listened to all the tapes that were produced to formulate the logs which we have now supplied.

Q So, I want to know, which were the ones you listened to in original tape as opposed to those you listened to as dubs?

A I say, sir, it is very difficult to recall after five years which were original and which were dubs.

Q Would it be fair to say -- and am I fairly interpreting your testimony -- that you don't know which ones you listened to originally and which ones were dubs?

A Well, have it as you may.

I can't say which ones were originals and which ones were dubs but I listened to the conversations which were intercepted.

Q Who was it, sir, who made these dubs or master tapes?

A The members.

Q The same two people?

A They did.

Q This would be on all projects?

A On the Vegas projects?

Q Yes sir.

A That was their specific assignment.

Q Whether it was their specific assignment or not, did they have any assistance in doing this?

A They didn't have any assistance at that time and our personnel was very limited.

Q I don't mean if they had an assistant. Did they have help in doing this?

A Oh, no, they did all their own work. They had no help.

Q Who would it be, sir, who decided which conversations were pertinent for you to hear? Would you or they?

A Both.

THE COURT: Now, this was all gone over before you represented the defendant, Mr. Iannuzzi, and I won't go for repetitious testimony just because you

came into this case --

MR. IANNUZZI: I don't mean it for repetition.

THE COURT: Well, it is in the transcript.

MR. IANNUZZI: I don't think to this point --

THE COURT: No, not to satisfy you, I know, Mr. Iannuzzi.

Go ahead.

MR. IANNUZZI: Thank you, sir.

Q When you heard the tapes, it was on the basis of the two gentlemen that you mentioned, Corporal LaValle and Corporal Couture --

A Sergeant Aube and Corporal Couture.

Q O-b-e?

A A-u-b-e.

I think you noted it wrongly.

Q Now, Sergeant Aube or the other gentleman, Couture, would make a determination of something of significance and bring it to your attention?

A As I said in previous testimony, every morning I used to examine all the logs of all the projects.

Q I'm not asking about previous testimony --

A I am trying to reply --

THE COURT: I will give you the previous testimony.

MR. IANNUZZI: I have read it.

THE COURT: Then don't go over it again.

Q Would it be the same two gentlemen who after listening to the tapes and making a summary, would bring your attention to the tapes?

A They might have and subsequent to receiving the logs I would call a meeting in the morning and say, "I would like to listen to tape so-and-so."

Q Did there come a point that they would listen to the tapes and make up a log indicating there was nothing of significance on that date?

A Yes.

Q So, they would make a determination of the significant recordings to you?

A At the morning meeting I would say, "Why is nothing significant on this tape?"

Well, the subject might be absent on a holiday to Boston, New York or Miami and he would be absent for four or five days and consequently, every morning when I picked up this log, nothing important, no recordings.

"What is the problem?"

"He is not back yet."

Q Well, on occasions when there wasn't an indication that there were no recordings but there were

recordings but nothing of significance, that would be the log you would read? They would make it up and you would say, "Nothing was recorded of significance"; correct?

A No. I wouldn't accept it that quickly. I would request my men to tell me why is there -- I asked the question, "Why is nothing on the log today," and they would say, "Look, according to such an item" --

MR. IANNUZZI: Objection. It is hearsay.

THE COURT: It is not hearsay on this issue. How he made the logs up certainly is not hearsay.

MR. IANNUZZI: This man didn't make up the logs.

THE COURT: You may continue, Mr. Patenaude.

THE WITNESS: Thank you, your Honor.

A If I came upon a portion for a period of one day, five days or two weeks, that there were no recordings whatsoever, I would say, "Why is there no recording from 0100 hours to 2359, the same day?"

"Well, he has gone to so-and-so and if you would refer to log item so-and-so on such a date and according to continued investigation and surveillance, this gentleman boarded this particular aircraft to such-and-such a destination and he is expected to be back in 14 days."

The project would be maintained and for 14 days you would have nothing and then on the return of the person that we were working on, the first telephone call, after his return, was recorded on the log and subsequently analyzed and discussed at our regular morning meetings.

Q Other then the times someone would be out of town and the telephone would be functioning, there would be logs you received that indicated the telephone was functioning and calls were made but not important?

A Could be.

Q And when these logs you received indicating nothing important was obtained in any of the calls, you would see the logs after the recordings were listened to by the two gentlemen you spoke about?

A Yes and in these particular instances it might have been strictly a child taking a phone off the hook or leaving it dangling or something like that and then maybe some insignificant corversation of two or three school kids exchanging homework.

Well, that didn't interest us and that is why they put "nothing of importance."

MR. IANNUZZI: Your Honor, this is not an answer.

THE COURT: I'd like to hear it. I'd like to

know how the summaries were made. That is part of the proceedings. You asked the question and you will get the answer.

(Continued next page.)

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CROSS EXAMINATION

BY MR. IANNUZZI: (continuing)

Q Those determinations you just indicated -- perhaps a child left the phone off the hook, or two or three children talking on the phone about homework -- Those were assumptions?

A Well, this is what --

Q I'm asking you, sir --

A This is what my men reported to me at the morning meetings.

Q Can you indicate which of those logs -- for instance, the date of December 29, 1970, would you tell me what your men indicated to you in reference to these particular logs, and would you read what it says in translation?

MR. PUCCIO: What page number?

MR. IANNUZZI: Page 77.

A Page 77, in Vegas 3.

From 1600 hours on the 29/12/70 --

Q That would be the 29th of December?

A That's right.

Q To 1600 hours on the 30th of December, 1970.

Would you read what the log says, please?

A "No information of importance in the content of this tape."

Q Now, when it indicated there was no information

of importance in the content of that tape, did that indicate to you there were no telephone conversations?

A Could be.

They could have been insignificant conversations, but they were not conversations in relation to the projects that we had in operation.

Q Does this particular log indicate to you that someone was on a vacation?

A Could have been.

Q It also could be they were there?

A They could have been out celebrating somewhere else.

Q This is an assumption on your part?

A Definitely so.

Q Do you know in fact what conversations were unimportant that your men recorded?

You say you discussed it with them the next morning. What did you discuss concerning this particular one?

A May I have it, please?

Q Surely.

(Booklet handed to witness.)

Q Do you have any indication as to what the discussions were in your office the next day relative to that particular log?

A This is four years ago. I cannot remember.

Q Do you remember what the men said was unimportant that they did not report to you?

A I can't recall.

Q Can you say specifically a child left the phone off the hook this day?

A I can't recall.

MR. PUCCIO: Your Honor, the question is being asked over and over again five or six different times in five or six different ways.

THE COURT: I know, but I will allow it.

Q Did a child have these conversations?

A I don't recall.

Q Do you know whether Mr. Dasti and Mr. Catroni were on the telephone that particular day?

A I don't know. There is nothing recorded on it.

Q If they were on the telephone that particular day, do you knnw what they might have said?

A If they were on the phone that particular day, it would have been on the record.

THE COURT: Mr. Iannuzzi, this is the greatest cross examination for a jury.

He can't recall at this point why nothing was recorded, and you asked the question twenty different

ways.

This is a waste of time, but I will sit here. I am sitting and you are standing, and maybe you'll tire before me.

MR. IANNUZZI: If it's a significant question, I will stand on my feet until midnight.

THE COURT: I won't allow it.

MR. IANNUZZI: I suggest to the Court that I am not here just to stand up.

THE COURT: Get to the heart of the questioning. Get to the heart of the matter.

Q Would it be that these two gentlemen determined -- In other words, they weren't instructed by you as to which phone calls --

MR. IANNUZZI: Withdrawn.

Q These other two gentlemen made up these logs?

A Right.

Q And they were the ones who determined that the information on this particular tape is of no significance?

A Right, but I can tell you one thing --

THE COURT: Please, don't answer it. Please don't answer it.

THE WITNESS: Thank you, your Honor.

Q And after having been told that there was nothing

of significance on a particular day, you would not bother to listen to those tapes?

A I wouldn't have any reason to.

Q Very well.

When you did listen to a tape, it would have been of the information that they, the two gentlemen, decided would be of significance for you?

A I would say so.

Q And of course, you have already indicated that you don't recollect exactly whether you were listening to the copy tape or the original tape; is that correct?

A Right.

Q Now, the tape that was kept in a particular security room in the Police Headquarters, the master tape was available for other persons to look at if they needed to understand something or clarify something for themselves in the investigation; is that correct?

A They were available for the Quebec Police Force, and to the people to whom we transmitted various information which we gathered, and upon which some Police action or Investigative action had to be taken.

Q Now, when these tapes were originally undertaken, they were for purposes or subsequent to the Vegas projects PT and 1-B; is that correct?

A Yes.

Q And that original investigation had to do with gambling and fellows who were going home without their paycheck?

A Right.

Q It didn't have to do with an investigation on narcotics, did it?

A No, not when the initial installation was made.

Q Yes, sir.

And in reference to the tapes that were kept secured, these were available to Police personnel?

A On a "need to know" basis.

Q Yes, sir, on occasion, I believe you testified.

I believe you also testified that after consulting the synopsis, is that still did not satisfy the investigator, or the operational personnel, or if they wanted some point clarified, they would go to the tapes to listen to them?

A Right.

Q Do you know of your own knowledge who are the people who availed themselves of this access to these tapes at any time?

A If we are talking in the strict time frame of December 1 to January 31 -- and in this particular case, these and that -- immediately when these tapes were made in that time frame, and I specify this -- The contents of these tapes

of some of these tapes, were made available to Staff Sergeant Paul Sauve of the RCMP.

Q And he turned the information over to Mr. Gallagher?

A Yes.

Q I am not talking specifically of the time span when the tapes were taken, but their maintenance since then.

Do you know the names of the persons who had access to these tapes from 1970 until the present?

A These tapes are kept in a vault in the Quebec Police Force, and are available, and have been made available to the Quebec Police Commission of Inquiry into Organized Crime during private hearings, and I have also testified at a private hearing at the Quebec Public Commission of Inquiry on Organized Crime, explaining to them the whole content of, what is known in the Quebec Police Force as, the Vegas Projects.

Q Sir, when these tapes were given to other persons, or other hearings, who had custody of them at that time?

A These tapes were removed from our office by both Sergeant Sauve and Corporal Couture, who had them heard by the Quebec Police Commission, and returned them to us.

Q Do you know whether or not these two individuals were the ones who played the tapes to these Commissions, or were they used on machines by personnel of the Commission?

A These two gentlemen did.

Q When you indicated these two tapes were kept in a vault, is this a vault to which Police personnel have access in the Police Department?

A Only two members have the combination, and access to the vault.

Q Is it locked?

A It is under the control of the member in charge of the service.

Q Would it be fair to know to whom they gave access or not, as opposed to yourself?

A I imagine they would.

(continued on next page.)

Q Very well --

A Because there is a very limited access to these tapes, access is very limited.

Q Now, in reference to the method that you indicated was used by yourself and your superiors in determining the use of wiretapping, you indicated that there were certain criteria, for instance if the cases fell within a certain category or if there was the possibility that other investigative methods would not be successful, and you indicated that in reference to P.T. and to 1B that is what was undertaken in your evaluation as to the use of wiretapping; is that correct?

A Would you kindly repeat that, please.

Q Yes, sir, certainly.

You indicated that there were certain criteria that you used in determining whether or not to wiretap; is that correct?

A Yes.

Q And that amongst the criteria would be whether the particular crime being investigated fell into a certain category; correct?

A Right.

Q And whether or not investigative methods, other investigative methods might not be successful?

A Right.

Q Is that correct?

A Right.

Q And these methods or these criteria were specifically referred to by yourself in making the determination in 1B and PT: correct?

A Right.

Q Now, thereafter you indicated that you also authorized the project known as Vegas 4, 5, 7, 8, 9, 11 and 12; correct?

A Right.

Q You indicated that as a result of information received, that is intelligence developed from the PT or 1B, you authorized the first of the Vegas numbered projects: correct?

A That is right.

Q Did you have a meeting between yourself and the other two persons to interview police personnel in the investigation to determine in connection with, say, the first numbered Vegas project whether or not in fact there was no possibility or little possibility of other investigative methods being successful?

A In these particular cases indications were that there was no need for -- there was no need for -- for further

verification because the intelligence developed from the analysis of the information indicated that it was an absolute necessity to proceed through the use of a wiretap to carry on the necessary investigation.

Q Well, you indicate in reference to the PT and the 1B that you would query -- you would interrogate the police personnel who were involved in the investigation to determine future steps; isn't that correct?

A Pardon me, I think that was a misunderstanding on someone's part. Particularly I don't -- this was not particularly in reference to the Vegas Project. If someone in my force came to me or at that time came to me and wanted a wiretap concerning some major criminal offense, say bribery or corruption, arson, armed robbery and so on and so forth, then I would say -- I would discuss with him and say in words, Your investigation, where is it from? Is it the result of a complaint or what is the standing? Or, Is it from the Fire Commissioner's Office, in the case of an arson? Whom have you interviewed and where is the standing of your investigation?

And he would say, Well, we have done this, this, this and that, and he would produce periodical reports on this, and then if there were no other way out but to proceed by wiretap, I would authorize it.

Q Did you make the determinations, sir, in reference to the numbered Vegas project after 1B and PT as to the advisability of continuing investigations other than by wiretap?

A In some instances, yes, and in others, no.

Q Do you know which instances? For instance, did you make it with reference to Vegas 3, did you undertake to determine with respect to VEgas 3 whether or not other investigative methods would be of any value?

A I don't recall offhand --

Q Did you --

A Let me -- Let me -- probably I can enlighten --

MR. IANNUZZI: If your Honor pleases, I would object to the continuance of the answer --

THE COURT: All of this was gone over at the last hearing, I remember very clearly.

MR. IANNUZZI: I have it right in front of me, sir.

THE COURT: This is not further examination, it is repetitive examination.

MR. IANNUZZI: May I respectfully suggest that I have read the minutes and there is nothing reflected in here as to whether or not there was an investigation prior to the determination of a wiretap, nothing what-

soever, sir.

THE COURT: Didn't you testify at the last hearing how you came to wiretap the first time in this case?

THE WITNESS: Yes, I did.

THE COURT: From there on each wiretap gave you information to make other wiretaps.

THE WITNESS: Yes, sir.

BY MR. IANNUZZI:

Q Now, did you make any determination at that time --

THE COURT: INcidentally, I don't have a copy of the minutes, all of this is from memory- I don't know where the original is.

I'm talking about the original to be filed with the court. I remember all of this vividly in my mind, and you just read the minutes.

MR. IANNUZZI: Yes, I have them here, I have them right in front of me, Page 24, for instance --

THE COURT: Go ahead.

Q Now, at the time that you authorized the second tap or the third tap, other than 1B or PT, did you make any investigation as to whether or not ordinary police investigative methods would be successful or not?

A When I authorized Vegas 3 it was very clear in my mind that whatever investigative method I used or which any member of my police force would have tried it would not solve or bring such a case to a head, it would have failed, therefore it was perfectly clear to me that the only way to gather the necessary information to make this investigation progress, was to proceed directly by wiretape, and these conclusions were achieved through the analysis of what had been recorded and what was being continuously recorded from PT -- from Vegas PT and Vegas 1B.

(Continued on next page)

Q Sir, when you made these determinations, did you consult with the other two men who were consulted on the original PT and 1B?

A Yes, I consulted with those two men, I also consulted with Staff Sergeant Bol Sauve who is the person that is -- who at that time was in receipt of certain information that we had developed, and we continued to transmit to him various information, and whenever we felt it necessary he was called in on some of our monthly meetings and handed over and disseminated all the information that was available in relation to the case at hand.

Q Did you consult with the investigative officers themselves?

A My contacts, and the only person I dealt with, Staff Sergeant Bol Sauve.

Q Other than he, did you talk to the investigative men of your own force to determine what they would be able to uncover by ordinary investigative methods?

A We are not entrusted with the responsibility under the drug act in Canada.

MR. IANNUZZI: Your Honor, I ask that it be stricken as unresponsive.

THE WITNESS: It is not our responsibility.

THE COURT: I will allow it.

Q Now, in reference to this -- is it Sergeant Sauve?

A Staff Sergeant.

Q Staff Sergeant Sauve?

A Yes, S-a-u-v-e.

Q Did he, you say, pass on information to you in addition to your passing information to him?

A As far as I am concerned I passed certain information when he was called in at a meeting, but I think the opposite is quite evident, we passed on ---

MR. IANNUZZI: Your Honor, this is not responsive.

A -- a terrific amount of information.

THE COURT: May I have the question?

(Question read.)

THE COURT: Continue.

I will allow it.

A We exchanged information, if that clarifies the point --

Q Yes, sir.

A As a matter of fact I think we passed on possibly 90 per cent of the information and received in return 10 per cent as a result of their investigation.

Q Do you know whether or not the Staff

Sergeant passed on information after consultation with Mr. Gallager?

A I wasn't a party to any of their meetings.

Q Very well.

Do you know whether or not Mr. Gallager had made suggestions in reference to some of the information or the items that the Staff Sergeant passed on to you?

A I don't know, I can't say.

Q Would it be fair to say, sir, that all of the physical aspects of the taping was undertaken by gentlemen other than yourself?

A Strictly members of the Quebec Police Force.

Q Of course, but not yourself, in other physically you didn't handle the machine, the erasures or --

A They were handled strictly by members of the Quebec Police Force.

MR. IANNUZZI: I have nothing further.

THE COURT: Do you have anything, Mr. Klar?

MR. KLAR: No.

THE COURT: Mr. Rosenthal?

MR. ROSENTHAL: No questions.

THE COURT: Mr. Puccio?

MR. PUCCIO: Nothing further.

THE COURT: You may step down.

Thank you.

(Witness excused.)

THE COURT: The next witness.

You may remain in the courtroom since you have completed your testimony.

MR. PUCCIO: We will call Claude Lavalee.

Your Honor, the interpretation will be from French.

THE COURT: I am going to suspend promptly at 1:00, then I have other matters at 2 O'clock, but they shouldn't take more than 10 or 15 minutes, so I will ask you to return at 2:15.

MR. PUCCIO: 2:15?

THE COURT: Yes.

MR. PUCCIO: All right, sir.

THE COURT: All right.

M A R G A R I T A M E N S A, having been duly sworn as interpreter from French to English and English to French acted so for the witness Claude Lavallee.

C L A U D E L A V A L L E E, having been sworn through the interpreter, by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. PUCCIO:

Q Mr. Lavallee, where do you reside?

A Valle de Volle.

Q That is in Montreal?

A Yes, it is in the north of Montreal.

Q And what is your present occupation?

A I do promotion for ski equipment.

MR. IANNNUZZI: May I ask only that the witness speak a little louder, even though I don't understand French, some of us here do.

THE COURT: Try to speak louder so the translator can hear what you say in French.

BY MR. PUCCIO:

Q How long have you been engaged in this occupation, Mr. Lavallee, approximately?

A After I quit the Surete of Quebec.

Q Were you formerly employed by the Quebec Police Force; is that correct?

A Yes.

Q And when did you begin working for the Quebec Police Force and when did you terminate your employment with them?

A I began in November of '62 and I terminated my occupation in May of '72.

Q Were you assigned to any specific unit or department within the Quebec Police Force during that period of time?

A During the last seven years I was in the Special Investigations Unit.

Q Now, I direct your attention specifically to the years 1970 and 1971. During those years did you work under the direction of Mr. Patenaude?

A Yes.

Q Now, Mr. Lavallee, during the course of your tenure with the Quebec Police Force, did you have occasion to become involved or work on certain wire tapping projects designated as Vegas Projects?

A Yes.

Q Are you familiar with Vegas 1B, PT, Vegas 3, 5, 7, 8, 9, 11 and 12?

THE COURT: Did you mean to skip 4?

MR. PUCCIO: Yes sir, that is immaterial, that is not relevant here, your Honor.

THE COURT: All right.

A Yes.

Q Now first generally with respect to Vegas 1B, can you tell us what your role was, what you did in connection with that project?

A I did installation, installed the lines from the wire tapping project.

Q Well, for Vegas 1B?

A Yes, sir.

Q And did you perform the installation for the other wire tapping projects, that would be PT, 3, the others that we are concerned with, PT, 3, 5, 7, 8, 9, 11 and 12?

A Yes.

Q Now, Mr. Lavallee, first, directing your attention 1B and PT, tell us what steps you took in order to effectuate the installation of those two wire taps?

A You want me to give you the information little by little?

Q Yes, can you tell us --

THE COURT: Yes, in detail, step by step.

Q Tell us step by step how you installed a wire tap designated as Vegas 1B and then how you installed Vegas PT.

A For Vegas 1B I did some research to find the cables, the wires from the telephone company.

Q Now, can you be a little more specific than that, what kind of research did you do, I mean physically what did you do?

THE WITNESS: Can I use my papers?

THE COURT: Surely.

MR. PUCCIO: Yes.

THE COURT: Mark them for identification.

MR. PUCCIO: May I examine that, excuse me, before it is marked?

THE COURT: Yes.

MR. PUCCIO: May I have a moment?

THE COURT: Yes.

MR. PUCCIO: Your Honor, there are a couple of other projects listed on this sheet, I have an identical, I have a copy of that, they would be Vegas 2 and Vegas 4, they are not relevant to this particular case, and this sheet, by the way, lists the date during which a particular wire tap was in operation, the subject and the persons, etc.

THE COURT: We will suspend at this point.

MR. PUCCIO: I can mark those two.

THE COURT: Well, revise it, just leave 2 and 4 out.

MR. PUCCIO: Right.

THE COURT: And if counsel insists, we will just have a Xerox copy of what he does have and I will seal it and then make the other copy available to counsel.

MR. PUCCIO: Okay, fine.

THE COURT: 2:15.

MR. PUCCIO: Thank you.

(At this point a recess was taken until 2:15 p.m.)

(Cont'd on next page.)

MR. PUCCIO: Your Honor, on the matter scheduling, because we have people here from out of town -- out of the country. In the event we don't conclude today, when will your Honor continue to to hear this matter?

THE COURT: I misjudged this entirely. I thought it was an hour. As a matter of fact, I had a bankruptcy hearing on at 3:00 o'clock. I am an perpetual optimist here. I'll have to go later. I don't know how late the reporters will stay --

MR. PUCCIO: If we have the e tended questioning of Mr. Patenaude --

THE COURT: I can't see how the technicians are going to take that long. When it comes to the lawyers, there I can see all kinds of debate on the situations. Let's see how far it goes. It will depend on what the cross-examination is. I don't know whether you intend to present your witness.

MR. IANNUZZI: I hadn't anticipated until after, of course, the United States Attorney's Office presents their --

THE COURT: I'll have to come back, too.

MR. IANNUZZI: Yes, sir.

THE COURT: My time is so terribly taken, I'm in the middle of a trial, what was supposed to

be a three-day trial, a civil trial, and I think they're going for two or three weeks.

MR. PUCCIO: I have no problem, your Honor, whenever you want to set it down, if at the end of today possibly we can get some occasion so I can have the people from Canada adjust their schedules.

THE COURT: This case is on for trial January 6th.

MR. IANNUZZI: Why don't we see what today brings. Judge, in reference to some written motions, as to the substantive aspects of the case, I have spoken with Mr. Puccio and he and I are going to sit down and see if we can dispose of matters that would not therefore have to be presented to you.

THE COURT: You are talking about pre-trial?

MR. IANNUZZI: Pre-trial motions --

THE COURT: Discovery, Bill of Particulars --

MR. IANNUZZI: As against the indictment. May I know how long your Honor will give me to get those in? I just don't want to run into a situation --

THE COURT: Time doesn't mean anything, except you've got to keep in mind that this case is going

3 to start January 6th.

MR. IANNUZZI: I will try and get them in this week.

THE COURT: Oh, that's time.

MR. IANNUZZI: Whatever Mr. Puccio and I decide upon between us, then you don't have to bother with those motions. Then the others will be entertained by the Court. Is that satisfactory?

THE COURT: What kind of motions, do you have an idea?

MR. IANNUZZI: They will be more or less as against the indictment, if there is anything against the indictment, or for a Bill of Particulars in reference to the case.

THE COURT: You haven't thought about it, you are just --

MR. IANNUZZI: I have various motions that I make, you know, in ordinary circumstances. If Mr. Puccio and I can agree on items for the substantive case, not the hearing --

THE COURT: You are talking about pre-trial?

MR. IANNUZZI: It has nothing to do with the hearing.

THE COURT: If you are talking about other motions that require hearing --

4 MR. IANNUZZI: I don't think so. These would be as against -- for Bills of Particulars, discovery for substantive purposes.

THE COURT: I think you should try to get them on the 6th. My motion day after that is the 20th. Because this case is on for trial, if you can't make them then, then make them at 9:30 any morning, but I can't take argument of more than a half hour. I will probably have a trial going.

MR. IANNUZZI: I will try to get them in by the 6th, and then Mr. Puccio and I can address ourselves to them and we will get in touch with you then as to anything else.

THE COURT: If there are a lot of problems then I will sit down and have a complete trial on them.

MR. IANNUZZI: Very well, thank you, sir.

THE COURT: Incidentally, that's what this was supposed to be, I was supposed to have a hearing and sit down and go over all the pre-trial, and is this the case I said all the motions will be made at that time?

MR. PUCCIO: Yes. In fact we had all agreed that any motions or requests for depositions, especially, which would require possibly going

outside the country, be made well in advance.

THE COURT: I say, if that's what you are talking about, depositions, and other counsel have been on this case from at least October 26th and possibly for months before that. So you should know now, whether you want to depose any witnesses. The government has said they will consent to the deposition of any witnesses.

MR. PUCCIO: Provided there is some reason to depose the witness.

THE COURT: What do you care?

MR. PUCCIO: I don't want to go to the other side of the world, your Honor --

THE COURT: If he's willing to, why shouldn't you? You'll have to show me a good reason for not going, because I don't want any question about this. I'm not saying this facetiously.

MR. PUCCIO: I understand. All right, in that case, your Honor, I will agree to go wherever is necessary.

THE COURT: That's right. You are ready to go.

MR. PUCCIO: Your Honor, we have made up a list of the pertinent Vegas wiretaps, including the period of installation, the period of

deactivation, subject, the address and the telephone number. I'd like that marked.

THE COURT: Mark that for identification as Government's Exhibit 5.

THE CLERK: Government's Exhibit 5 marked for identification.

(So marked)

THE COURT: The one you don't want to reveal that shows --

MR. PUCCIO: There are two that we don't --

THE COURT: Two and four, my Clerk will seal those and deliver back to the United States Attorney for possible review by the Court of Appeals, those documents.

MR. PUCCIO: I can have the pertinent details on those two prepared. I have the original sheet where they are crossed out and one of them can't be read. So I'll have the pertinent details for those two prepared so they can be sealed.

THE COURT: All right.

Mr. Lavalle, will you please resume the stand.

C L A U D E L A V A L L E, called as a witness, having been previously sworn, resumed the stand and testified further as follows:

DIRECT EXAMINATION

BY MR. PUCCIO:

MR. PUCCIO: Your Honor, the li[illegible] I handed over was not complete. In connection with Vegas Three, which is a wiretap on the phone of Frank Dista, telephone number 488 0339, and apparently it was changed to 488 2470 -- I believe it was first 488 -- I have it right the first. 488 0339 and then changed to 488 2470. There was as part of that Vegas Three project there was additional interception at theLaurentien Hotel on a pay phone and Mr. Lavalle also performed that interception.

THE COURT: Can you just add it?

MR. PUCCIO: On a sheet of paper we'll add it.

THE COURT: Why don't y[illegible] write it in now so that he has it.

MR. IANNUZZI: I will write it in. Just tell me what it is.

THE COURT: Mr. Puccio has the information. Let him write it on. Is that the only omission?

MR. PUCCIO: Yes.

THE COURT: Suppose you do that.

MR. PUCCIO: That was a very short interception,

it was on January 16, 1971 at 10:00 a.m. in the morning at the Laurentien Hotel, 1130 Peele Street in Montreal. The telephone number is 514 861 0615. It was a pay telephone in the lobby, and it only lasted for a matter of minutes. That call was recorded and a transcript of that call has been turned over and it's included within our exhibits.

THE COURT: Will you write it in?

MR. IANNUZZI: Vegas number of any sort?

MR. PUCCIO: That is part of Vegas Three. PT stands for public telephone, I believe. As an adjunct to Vegas Three on Dasti, this interception was also made. So Vegas Three would include two phones now.

Your Honor, this morning after the testimony, I spoke to Mr. Landry and he indicated there was a mistake made by Mrs. Menza, who by the way is an excellent translator. The witness was referring to a telephone pole, and I believe it was translated as a telephone office.

THE COURT: Ask the witness that and ask him whether what he said in answer to that question—

MR. PUCCIO: What we would like to do, your Honor, we would like to proceed by having the

witness testify in English, and only if he needs to express himself in French or doesn't understand anything, Mrs. Menza will be available, because some of this testimony is very technical.

THE COURT: Go back to where you say --

MR. PUCCIO: I will start --

THE COURT: Did you realize when you said "pole" in French that she translated "office"?

THE WITNESS: Yes.

THE COURT: So it was an incorrect translation?

THE WITNESS: Yes.

THE COURT: And you want to correct the answer to show it was "pole"?

THE WITNESS: Yes.

BY MR. PUCCIO:

Q Mr. Lavalle, what I'd like you to do, if you can, is to go back first with respect to Vegas 1-B and tell us what steps you took to install the wiretap for that project, which is the Victoria -- one of the taps in the Victoria Sporting Club.

A Well, we had to first find out where the telephone line for that number 677 9272 was available in that vicinity of that 837 Taschereau Boulevard.

Q How did you go about doing that?

A Well, we go up the telephone poles and we open what we call the terminal and we check the line by taking our test set, the apparatus that the telephone men use --

Q Can you describe that apparatus to us, please?

A Okay. It looks like a very miniature telephone, similar to the one that you have on the receiver of your telephone, but on top there is a dial, very miniature dial that we can use to dial the number we want.

Q So you can both dial and talk and listen with the same piece of equipment?

A Yes. And monitor. That is something that you can't do with a regular telephone apparatus.

Q You can also monitor, is that correct?

A Yes. This is connected to a wire, and the wires are attached to prongs, you know, alligator clip, what we call, and the way I was doing it is to grab these clips and put it on the screws. These screws are called terminals. By using any line available where there was dial tone, then I could dial this number, 677 9272, and out of the hundred or few hundred pairs available in the cable, at that particular point, I could retrace back this number by short-circuiting the wire that was going through

the terminal.

THE COURT: Where is the terminal box?

THE WITNESS: Up the telephone pole.

Q So you would be on top of a telephone pole while you would be doing this, is that correct?

A Yes. And I would go on until I reach the point that I will answer manually the number I was calling by making a short-circuit to it, using a pair of pliers or cutters, like we used to call it, and by the ringing sound will stop. Then on that particular pair of wires then I'm sure that I'm on the right circuit.

Q So your efforts were directed towards finding the telephone wires that were hooked up -- that ran from the pole and ultimately were hooked up to 677 9272, is that correct?

A Yes.

Q And the process that you just described, where you short-circuited various lines, was in an effort by you tolocate the line that led to 677 9272, is that correct?

A Yes.

Q What would happen --

THE COURT: You short-circuited to stop the ringing, didn't you?

THE WITNESS: Yes.

THE COURT: Because when you dialed on certain wires, that was not the number, you would get nothing?

THE WITNESS: Nothing.

Q When you did -- when the ringing did stop, you knew you had the right line, is that correct?

A The only thing that could happen is making a short-circuit on our own line. But this will not stop the ringing, that will keep on going. Except it will just stop momentarily our transmitting sound and that's it. But when the ringing sound stopped then we are sure we are getting the proper wire.

Q What did you use to short-circuit the lines?

A It's a pair of pliers, like cutters. But we don't press far enough to cut the cover, we just press so he can go through the insulation, the plastic cover of the wire.

Q While you were using this pair of pliers to cut into the covering over each line on the pole, the device that you had, the instrument had already been in use, you had dialed the number that you were looking for?

A Yes, sir.

Q And there was a ring?

A Yes, sir.

Q After you located the line that was connected to 677 9272, what did you do next?

A Then I will go --

Q With respect -- excuse me?

A Then I will use my prong and go directly on these two wires, reach the copper properly and make a good contact with it and then dial back my number and I will get a busy sound back.

Q So you attached a wire to that very line, is that correct?

A My two alligator clips.

Q The alligator clips, of course, were attached to this instrument?

A Test set.

Q What did you do next?

A The next thing to do is to get what we call drop wire, it's a much bigger wire that goes from the pole to the house and I will attach that drop wire to these two wires that are used on that particular line, 9272, and then I'll be ready to go. But before last, before I step down the pole, I will call my office from another line -- from that line, I should say, and I'll call my office and in that conversation, Bernard Catrou, and I will ask him

to call me back on 677 9272, then I will monitor, with the talk position of my button I will clip it down to monitor and then I will wait, and ten seconds later I will get that ringing sound, it could be somebody who wants to call this particular subscriber or else it could be my partner. But in any case, I will answer it, and say, okay, it's me, thanks very much, and I'll shut it off.

Q That was what was done with respect to Vegas 1-B, is that right?

A Yes.

Q What happened to that drop wire that was connected to that line?

A Then I will climb down the pole and I will get the end of that drop wire attached to our OP, our off premises -- our observation post, I should say.

Q In that case, would you tell us the address, where was your observation post?

A It was about a block and a half away from 837 Taschereau Boulevard.

Q I take it the telephone pole was in that vicinity, too, is that correct?

A Yes, a few hundred -- probably 75 feet away from that observation post.

Q So you ran this wire from the telephone pole

into a building?

A Yes, sir.

Q What was located inside the building?

A Well, we got the wire as far as our room and we installed it on the device that start automatically wherever there is a sound on that particular line, 9272.

Q What do you call that device?

A It's an automatic starter.

Q The wire from the telephone pole, the drop wire, as you call it, was connected to an automatic starter in the room in this building?

A Yes, sir. And --

Q Was the automatic starter connected to something else?

A The automatic starter was connected to a tape recorder and being left on a standing-by position, I should say, ready to record.

Q Are you familiar with how the automatic starter operates, generally familiar?

A Generally familiar, yes.

Q Would you be able to describe to us how an automatic starter operates in that particular context?

A In that context, it will work on a variation of voltage. Whenever the people in 837 Taschereau

Boulevard will pick up the phone there will be a drop in voltage.

THE COURT: Incidentally, do you have any background in electronics or electrical engineering, any schooling or experience?

THE WITNESS: I have previously to police work, eight years of telephone work as an installer, repairman, test board operator and central office operator.

Q So that when the phone is picked up at this 837 Taschereau, that is 677 9272, this automatic starter would activate, is that right?

A Will activate a relay and the relay will start our machine.

Q I'm sorry, would activate --

A A relay. That's a mechanical device that is -- that makes contact with an induction coil. It's an electronic design.

Q Where is that relay located?

A In the apparatus that we call the automatic starter.

Q What would happen would be that the tape recorder would turn on when the phone was lifted off the receiver, is that correct?

A Or any other foreign noise on the line, like static, whatever it is, but this is quite normal.

Q With respect to this Vegas 1-B, what you did was set up the equipment to operate with this automatic device, is that correct?

A Yes, sir.

Q Now, with respect to Vegas PT, can you tell us how that was done, and if it was done in the same way, indicate that it was done in the same way.

A It was done in the same way at the same time, a few minutes apart.

Q Vegas PT, another telephone located at the same address, is that correct?

A Being up to the pole you stay there and do both jobs at the same time.

Q So you did them both at the same time?

A Yes, sir.

Q And I take it that a drop wire was also used for the second telephone, Vegas PT?

A Yes, sir.

Q And an automatic starter, is that correct?

A Yes, sir.

Q And the drop wire went to the same observation post for both 1-B and PT?

A Yes, sir.

Q Now, I direct your attention now to Vegas 3, 5, 7, 8, 9, 11 and 12.

A Yes.

Q You've already testified that you installed those wiretaps, is that correct?

A Yes, sir.

Q Were they all installed in the same way or according to the same method or a different method?

A We used different methods in those cases.

Q Different from Vegas 1-B and PT?

A Yes, sir.

Q But the method used for 3, 5, 7, 8, 9, 11 and 12, was that the same?

A Not the same as the first two.

Q But were the other seven all the same?

A Seven all,yes, the same. Sorry.

Q Can you explain what method you used and what steps you took to install the other seven wiretaps?

A Well, with words it will be one part of my explanation and probably with a drawing I can give you more of an explanation.

MR. PUCCIO: I ask that he explain it first and then possibly detail it on the blackboard if necessary.

THE COURT: All right.

THE WITNESS: Thank you. We will find again the particular line, let's say, for instance in Vegas 3, we will find 4880339 on the terminal box and then we decide that in that case -- in that apartment house that this would be the best place to get our service to be put on. Saying service means that we will look for an apartment in that vicinity and we will rent an apartment and then we will call the telephone company and ask them to install telephone service in that apartment.

THE COURT: Did you do the renting? Do you talk to the landlord?

THE WITNESS: Yes. Not myself, mind you, I would -- somebody else would do it for me. So I wouldn't be involved as the person that rents the apartment and being the telephone man at the same time. In that case, we will rent telephone service and the day after we will go back to our telephone terminal post and disconnect that service that goes up to the apartment and use that particular telephone line and hook that on the -- on our suspect, and this is what we use. The words we use, on our suspect line to hear whatever have to be heard.

BY MR. PUCCIO:

Q You say you would rent the apartment, have a phone installed and then you would go up on the telephone pole and disconnect that line, is that correct, the line you rented, is that correct?

A Well, disconnect that line from the terminal point to the apparatus itself. We don't need that part of the line.

Q Then how do you connect the line you rented to the suspect line, as you call it?

A We connected it by using what we call a little old lady.

Q A little old lady?

A Yes.

Q Will you be able to describe for us the little old lady?

A Can I use the blackboard?

THE COURT: Surely. Please bring the blackboard or green board closer to the front, please. Do you need different color chalk to show different lines?

THE WITNESS: That will do. Thank you very much.

THE COURT: All right.

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THE WITNESS: I have to explain-- that principle is the suspect apartment and this is our apartment here, that we call our OP. There is two wires that goes to a box here and this is the terminal box. These two wires will come down to this point here and there the terminal binders --

Q Is the telephone box located on a telephone pole?

A Either a telephone pole or else in the basement of the apartment house. Most probably it will be in the garage. This would be the same from the apartment here down to the other point of terminal. In this case the telephone will be installed and in this case the telephone is already there.

Q You are indicating that a telephone was installed on the observation post?

A Yes, by the telephone company. Under a false name.

Q By the Quebec Police Force?

A But not the Quebec Police Force. In that case this would be the little old lady, that we will install in the terminal, and there would be two wires that comes out on one side and there will be two other that comes out on the other side. This makes us to be able to receive

the conversation from the suspect side, to intercept.

Q Could you describe this little old lady for us, is it a small metal box with wires sticking out of each end?

A Well, there is electronic construction, but the main part in it that makes the whole thing to work is we use an induction coil. An induction coil is a coil, a circular thing that is probably maybe a half mile long, but it's very, very thin wire and we will use another wire, this wire will go to the suspect and that tinny little piece, that is only that big, the tip of my finger, that will be our OP wire. That follows that one into this coil, but without never touching it. This is what we call an induction coil. Whenever there is a telephone conversation that goes on here on this side, on this side here that side will pick it up by induction. To give you a better example, if we put up high tension wire poles like this with wire that goes for miles and miles, let's say for ten miles, if this was 50,000 volts in power, in line power, having another wire very, very close to this one for ten miles, at the end of the ten miles this probably could light up a bulb, with enough induction, enough loss of energy that the one from underneath will grab and give you this amount of energy, probably 50 volts out of 50,000.

That's stricly approximate. In that case, this would do the same. The power loss in one wire would be grabbed by the other one between it side by side.

Q Because of the proximity of the two wires, the suspect wire and the official post wire, which you say never touch, the official post wire is able to pick up sounds from the suspect wire, is that correct?

A Yes, sir. It's very faint, but this can be amplified.

Q Now, this was the procedure used for the interception with respect to Vegas 3, 5, 7, 8, 9, 11 and 12, is that correct?

A Yes, sir.

Q Now, would you be able to explain for us how you or other members of the police force were able to monitor the conversations coming from the suspect phone?

A Yes. In that case this would be our headquarters in Montreal and we will -- because this OP of ours has telephone circuit number registered to the telephone company --

Q A telephone number?

A Let's say, 1234567, we will have in our headquarter line available so we could make a telephone call going to a central office -- this is quite normal,

mind you, going to a central office telephone number. We could reach this number by calling it directly and when this number is dialed, this apparatus, the little old lady would answer automatically on a first ringing sound. And then we will leave our phone, or whatever that is replacing the apparatus itself, we will leave the line open as long as we want. For six months, a year, a year and a half. And we will listen to the suspect at any timehe's picking up his phone or dialing in or dialing out or being called.

Q So that you from your headquarters, you dial the telephone number of the official post andas soon as you do that, you've made a connection between your headquarters and the suspect's phone, by the use of this little old lady?

A Yes, sir.

(Continued on next page.)

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Q Now, did you take steps at your headquarters to record what was coming over the suspect's phone, and if you did, how did you do that?

A Well, in this case these lines were strictly with what we call -- well, Jacks --

Q You mean a switchboard?

A Like a switchboard, well, you probably have 20 telephone lines side by side, and there will be, well, well, you plug in the apparatus and call that number and hold that circuit by some smaller resistance that will be the equivalent of the resistance of the apparatus, the electrical resistance, and we will remove that and put a jumper to there, and there is it, it will reappear on the tape recorder positioned there --

Q In other words you would always keep that line opened --

A Yes, sir.

Q (Continuing) -- your rented line?

A Yes.

Q You would always have a connection with your rented line?

A By doing this we are holding a circular switch in a central office, and I know by the fact of having first been the telephone central office that these switches, well,

they don't stay too long in position, they might be disconnected, so the central office operator will pass by and look at these and check and monitor them, and if there is no sound he will make a trip, come down again and we will lose our contact, we will then dial again and grab another switch to keep it on, to avoid the operator in the central office recognizing what looks like a defective switch, we will then every hour disconnect our call and do it again.

Q Dial the observation post again?

A The observation post again, that is right.

Q Now, did you also have an automatic stopping device for the tape recorder?

A In our headquarters we had, we use a Uher Royal Deluxe, Tape recording machine and they have already been designed to be used with a voice activator.

Q So there again, when the telephone is picked up, the suspect's phone is picked up, the recording device at your headquarters will be activated?

A Exactly, and having the machine on the record position whenever a sound comes up, the machine will start.

Q Just for a point of clarification, nothing really happens at this observation post; is that correct?

A You never go back there until --

Q You just rent that room to just decide renting

a telephone line; is that correct?

A Yes, sir.

Q No tape recorder is located at that observation post?

A No, sir.

Q So essentially two different types of procedures were used in this Vegas Project, first the drop line for 1B and PT, and then the Little Old Lady for the 7 other wiretaps we are considering here?

A Except for that very fast recording that we had at the Laurentian Hotel.

Q Did you also install the wiretap on the telephone in the lobby of the Laurentian Hotel, the 514-861-0615?

A Yes, sir.

Q That would be on January 16th?

A The 16th.

Q Yes, sir.

Would you please explain to us, please, how that intercept was made?

A Well, there were three pay telephones available in -- how do you call it -- the lobby --

Q Yes.

A And we had -- I don't know the chaps, we had two helpers from our police offices and they would occupy

both sides, the two of these three so that only one would be available at that particular time, 10:00 o'clock in the morning.

Q I see, you made sure in effect that only one of the three phones could be used, you had two police personnel using the other two?

A Yes, sir.

Q Then what happened?

A Then this was done, and then I walked down into the basement of the Laurentian Hotel and I got onto the terminal and found out about this particular circuit number that I have mentioned --

Q 861-0615?

A Yes, sir.

Then I hooked up with the pair wires, put it onto the C1, the Sony Cassette Tape Recorder, and I stood by for this call that would be done.

Q And you did make a recording that morning through this means; is that correct?

A Yes.

MR. PUCCIO: I have no further questions, your Honor.

THE COURT: Mr. Iannuzzi?

Do you want the witness to wait at the board or

do you want him to go to the witness chair?

MR. IANNUZZI: To the chair.

THE COURT: Mr. Puccio, I would expect you to take a copy of the diagram that the witness has put on the blackboard.

MR. PUCCIO: We will do that right now, we will take a Polaroid photo now, your Honor.

THE COURT: Yes, please.

MR. IANNUZZI: May I proceed meanwhile, sir?

THE COURT: Please, yes.

MR. IANNUZZI: Thank you.

CROSS-EXAMINATION

BY MR. IANNUZZI:

Q Mr. Lavallee, when you connected the phone from the headquarters and made a call to the number that you have down there at the observation post, 123-4567, that would be just an ordinary telephone call from headquarters on an ordinary telephone?

A Yes, sir.

Q And then you would get your number, 123-4567, or whatever it was; correct?

A Yes, sir.

Q And then as a result of the fact that you have what you had described as the LIttle Old Lady attachment, you

could keep that circuit open?

A Yes, sir.

Q Is that correct?

A Well, not exactly, it is not the Little Old Lady that keeps the circuit opened.

Q What is it that does that?

A The holding from the headquarters that we are doing willingly, that helps us to hold on the connection, the 123-4567 number.

Q Now let me just understand this;

You would rent from the Bell Telephone Company a number, and for purposes of this example the number at the observation post is 123-4567, and you would rent that number from the Telephone Company; is that correct?

A Yes, sir.

Q And that would be -- withdrawn.

Was that actually done, to your knowledge, in other words that is a phone which is ordered from the telephone company?

A It definitely was.

Q Did you do the ordering, sir?

A Somebody else was doing that.

Q Just in reference to yourself, you did not do the ordering of that phone?

A No in those cases, no.

Q In any event, a phone was installed at the top and a certain number was given there at the observation post by the telephone company; correct?

A Yes, sir.

Q And that was an ordinary telephone which was installed by the Telephone Company in an ordinary manner; is that correct?

A Yes, sir.

Q Now thereafter you would go to the terminal box, wherever it was located, which -- withdrawn.

At the time that you ordered the phone, 123-4567, you knew that the suspect's phone had the same area exchange?

A Exactly, yes.

Q And that is the reason you ordered the phone in that particular area?

A Yes, sir.

Q Right?

A Yes, sir.

Q You knew that the terminal box for the suspect's phone would be in the same place as the terminal box for the observation post phone?

A Exactly.

Q Now, when you went to the terminal box, whether

it was on a telephone pole or whether it was in the basement of the building, the telephone pole, let me justask about that, did you have permission of the Telephone Company to go up his pole.

Q Did you have the permission of the person who owned the building to go into its basement?

A No.

Q Is the law concerning the enjoinment of private property any different when it applies to a policeman?

MR. PUCCIO: I'm going to object to that.

A I don't know.

THE COURT: Objection sustained, it is argumentative.

MR. IANNUZZI: Very well.

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Q In any event, when you went to the terminal box, you hooked a LIttle Old Lady in, what you refer to as a Little Old Lady, the induction coil, correct, you hooked that in so that the suspect's phone was connected to one side of it and then to the other side you connected the pair of wires that went to the phone in the observation post; correct?

A Yes, sir.

Q Now, in doing that, did you disconnect the telephone pair on the observation post phone from the switchboard or the central office of the Telephone Company?

A Yes, sir.

Q So that when it was connected to the Little Old Lady in fact your phone, if I might refer to this diagram, your phone here at headquarters through this (indicating) what you have indicated is CO, through the observation post (indicating) then through the Little Old Lady made a direct line to the suspect's phone; correct?

A Not correct, it was not a direct line, it was inductive.

Q It was done by the induction coil.

(At this point the witness conferred with the interpreter.)

A It was interconnected by a magnetic field.

Q Very well, in other words it came only up to the Little Old Lady, it was in any event a direct connection from HQ to CO to OP to the LIttle Old Lady?

A Yes, sir.

Q So far correct?

A Yes, sir.

Q And this suspect's phone also was connected to the Little Old Lady?

A Yes, sir.

Q And then by induction you absorbed the power from the suspect's phone?

A Yes, sir.

Q Correct?

A Yes.

Q The power that you were using was not the power of 123-4567, was it?

A Yes, it was that power first and the last of the other lines, the suspect's line, very minimal or minus loss of power that we grabbed.

Q In other words, did you connect these two wires from the central telephone switch (indicating)?

A Yes, sir.

Q In other words, if you connect these before you connect them to the LIttle Old Lady, this phone no longer

is in operation?

A No longer.

Q No longer in operation?

A No, sir.

Q So that which was rented from the Telephone Company and which was supposed to be an ordinary telephone line, once you pull these wires off it's just a piece of wire with a plastic receiver, it is not a telephone any more?

A That is right.

Q And the way that it got power, now was to be connected with the Little Old Lady and then back to the suspect's phone?

A Yes, sir.

Q And the suspect's phone was one that you were not paying for; is that correct?

A I wouldn't know that.

Q The person who is paying for the suspect's phone was paying for that?

A I don't know if he was paying his bills, I am sorry.

Q Well, assuming, assuming that this phone was being paid for, you were paying for this phone (indicating) --

A We were paying for the phone 123-4567.

Q But whether or not it was connected, it wasn't an operating phone anymore, it was disconnected?

A It was an operating line.

Q But it had to be connected to something?

A For our purposes, yes, sir.

Q And you did disconnect from the central office of the Telephone Board, didn't you?

A Yes, sir.

Q Did the Telephone Company know that you had connected a Little Old Lady in the terminal box?

A No, sir.

Q Had you in fact put a Little Old lady into the telephone box?

A In the vicinity of the telephone box, yes, sir.

Q Did the Telephone Company know that?

A No.

Q Did you get permission or authority to do that?

A To do that, no.

Q When you say that this line had a certain amount -

A I am sorry, on the last question --

Q Yes, sir, yes, sir.

A I said, no, I didn't get permission from the Telephone Company, I got it from my superior.

Q Your superior in the Police Department?

A Yes, sir.

Q Your superior in the Police Department doesn't own the equipment of the Telephone Company?

A He probably has shares in it.

Q He may have a couple of shares?

A Presumably.

Q And when you say that this wire, the suspect wire has power, how much power, from your experience with the Telephone Company, does a line have?

A 48 volts, sir.

Q 48 volts.

And when the induction coil absorbed some power from the suspect line, it in fact took some of the power from that 48 volts that is in the line?

A No, no, I am sorry, it is grabbing, it is recuperating what is lost anyway.

Q When you say there is a loss, in other words there is a loss of power in any event?

A In any event in any power line whatsoever.

Q Do you know whether or not in fact when you put an induction of that sort in that it does not induce a further drain; do you know that for a fact that it doesn't?

A By the fact that I have heard of from some of the Bell Telephone Company engineers, no.

Q Do you know that of your own knowledge that an induction coil does not induce a greater loss than the line has by itself?

A I wouldn't be that much of an expert, but I don't think so.

Q Very well.

You don't have any training in that aspect of things, do you?

A Not in that minor detailed training, no.

Q That minor detailed training would be something an electronics engineer might know?

A Probably.

Q You said your experience with the Telephone Company was that as a linesman?

A As an installer, a repairer.

Q An installer, a repairer of phones and a linesman for the Telephone Company?

A Yes, sir.

Q You didn't have any function in designing telephones or the amount of power necessary to have a proper signal?

A Not in my case, no.

Q No.

Now, when you were on the telephone pole and you

were looking to find the particular pairs that you were interested in, you would start somewhere and go one after the other until you found the line you wanted; is that correct?

A Yes.

Q And after that while you were still on the pole you would use that pole and another set of pairs to call your office; is that correct?

A Yes, sir.

Q And then you had asked someone in the office to call the line that you think you tapped into just to make sure; correct?

A Yes, sir.

Q Now, when you use this other pair you call your headquarters, was that some other subscriber's phone?

A Yes, sir.

Q And in other words you were using somebody else's phone to call your headquarters?

A Yes, sir.

Q Did you have their permission to use their phone?

A No, sir.

Q Did you have the Telephone Company's permission to use somebody else's phone in order to call your headquarters?

A No, sir.

Q Did you get authority from the Telephone Company to do that?

A No, sir.

Q Did your company -- did your police force pay the Telephone Company so that you could use somebody else's wire?

A No, not particularly.

Q Did your Police Department pay --

THE COURT: Mr. Puccio, may we get a concession on that, perhaps it may eliminate some of the examination.

Do you agree that the Quebec Police Force did not pay anything to the Telephone Company except the payment for the installation and the use of the number it installed?

MR. PUCCIO: Yes, we would stipulate that the only payment that was made was for the rented phone at the observation post, everything else was done without any payment -- the rented line, I should say more properly is the way of stating it, they rented a line, yes, sir.

THE COURT: But aside from that, no other payment was made?

MR. PUCCIO: That is correct.

MR. IANNUZZI: Well, I would like to ask one

or two more questions not directly on that but perhaps it will solve our problem.

MR. PUCCIO: All that they paid for was the rented line, nothing else was paid.

THE COURT: They paid for nothing and the interception was made without the knowledge or permission of the Bell System.

MR. PUCCIO: That is correct.

THE COURT: Now that you have that stipulation what is the question, and I promise you I will make that a finding, and you cannot get any better than that on that issue.

(Continued on next page)

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BY MR. IANNUZZI:

Q Now, sir, when you have this phone and you say you would leave it off, in other words you would make the call and then you would leave it off, so to say, the hook for perhaps six months or a year, for however long you needed it --

A Yes, sir.

Q Now, during that period of time it would be as if the phone were all of the hook?

A It would be as if the phone, the apparatus itself, would be completely disconnected from the 42A block, the connection block on the wall inside the apartment house.

Q Very well, so if in fact the telephone line, it being off the hook for six months or a year, there would be no charge for telephone calls being made or going over the wires that were supplied by the telephone company; is that correct? There were no calls as far as the telephone company knew; is that correct, sir?

A No, there was no call.

Q But in fact there were many calls going over these wires to your headquarters; is that correct?

A Yes.

Q So that for six months or a year in fact you

were using these wires and not paying anything for calls that were going over them; is that correct, sir?

A I don't know.

Q All of the calls that came from the subject phone, perhaps 100 or 200 over a period of time or even a thousand went over these lines and not one penny was paid to the telephone company for the thousand calls?

A They were not going over these lines.

Q You were not using these wires?

A Can I go over there --

Q May I ask you this question:

Were you using these wires (indicating)?

A For a little old lady and the observation post connection.

Q Yes, and there were telephone calls and voice transmissions going over these wires (indicating); weren't there?

A Voice transmissions but not telephone calls.

Q Voice transmissions were being used over these wires?

A Yes, sir.

Q They were carrying the voice just like any other telephone carries a voice to your home?

A And any other parasite noise on the line.

Q And these lines were carrying these voices?

A Yes, sir, and other parasite noises.

Q And other parasite noises; is that correct?

A Yes, sir.

Q And these 100 or 200 or a thousand telephone communications were going over these wires and not one penny was paid to the telephone company for all of that?

A There was no use to pay, we were receiving, we were using the line 123-4567, , for our own purpose and the purpose was just to grab the loss of the power from the subject line.

Q Was any money paid or reimbursed to the telephone company for one telephone call that was made over 123-4567?

A We were not making outside, outgoing calls, but we were always making incoming calls on that line.

Q As a matter of fact -- withdrawn.

Now, when you were able, sir, to tap into these wires, you did in fact do as you have indicated; is that correct?

A Exactly.

Q Now, is it possible also for someone else to tap into the same wires, the same way that you did?

A Well, that could be --

(At this point the witness spoke to Miss Mensa.)

A This is a presumption, I agree with you.

Q Now, when your machine --

THE COURT: In other words, now that you are not working for the police it is posssible for you to do the same thing, isn't it?

THE WITNESS: Definitely.

THE COURT: All right.

Q And when --

THE WITNESS: May I add something on that?

THE COURT: Yes.

THE WITNESS: It is possible for me to do the same thing if I want to because I have the knowledge.

THE COURT: Yes, that is all the question is.

THE WITNESS: Thank you.

THE COURT: Mr. Patenaude, I don't want there to be a conference between you two.

MR. PATENAUDE: I am sorry, sir.

MR. IANNUZZI: I just want to ask a question that I didn't understand too well.

Shall I continue, sir?

THE COURT: Surely.

Q In the phone, what is it, 48 volts?

A Yes.

Q You indicated that this was disconnected from the 48-volt power pack or whatever you said is on the wall of the observation post, in other words when you made this connection (indicating), you disconnected it from the 48 volts that belong to the 123-4567 number?

A Yes, sir.

Q So that the power was supplied from another 48 volts?

A I misunderstood your question, the power to call our number 123-4567 and get an automatic answer from the little old lady was supplied by our own circuit, the power itself.

Q You mean when it closed with the circuit from the suspect phone?

A No, we were not using that power at all.

Q All right --

THE COURT: Now, Mr. Puccio, I am seeking concessions that might reduce the hearing time.

Do you agree that if this tap were made by an ordinary citizen and not by the Quebec Police Department that would be a violation of the Bell System Telephone Act?

MR. PUCCIO: May I consult with Mr. Landry?

THE COURT: Yes.

(Mr. Puccio conferred with counsel at Government counsel table.)

MR. PUCCIO: Not necessarily, your Honor, because according to the excerpt that I read this morning from Copeland, the judge in that case didn't view wire tapping as a inteference under the Act, so presumably even a private person if he were do it, it wouldn't be a violation.

THE COURT: All right.

I thought I might shorten this.

(Mr. Puccio then conferred with Mr. Landry.)

MR. PUCCIO: I think we have a little bit more on that.

MR. IANNNUZZI: Would your Honor ask whether or a stipulation might be entered into that if a person other than a policeman did this that it would be violative of the Criminal Code, Section 287, to wit, a felony for interference with telecommunications.

THE COURT: If they won't give you a concession on the act, it being a misdemeanor, I don't know how you can expect them to confess to a

felony.

I don't know, the violation depends on whether the Bell Telephone Company lost anything, I think the way it reads is whether someone got something for nothing.

I don't know that anybody is entitled to the waste product just because they were appropriated.

The argument seems to be that since this was waste anyway, it does not use the telephone lines.

Isn't that your position, Mr. Puccio?

MR. PUCCIO: I am sorry, your Honor.

THE COURT: I say the argument seems to be that since this energy, this 48 volts, would have been wasted that it didn't amount of a violation of the Bell Telephone Act because it wasn't taking anything from the Bell Telephone Company.

MR. PUCCIO: Those 48 volts on the 234-4567, which is our sample here, was paid for, in other words the police force was paying for that line, whether or not there was a telephone attached to that line or not is not relevant, they were paying for the voltage, they were paying for the use of 123-4567.

THE COURT: To the suspect's house?

MR. PUCCIO: They were paying for the use of that particular line to which they connected the little old lady which was connected to the suspect's phone.

THE COURT: Weren't they getting th e use of the lines from the suspect's house to the --

MR. PUCCIO: No, as I understand it, they weren't using the line, they were just listening in, that is what he was saying.

THE COURT: All right.

MR. PUCCIO: They were listening in on their own line --

THE COURT: I understand.

MR. PUCCIO: -- and paying for the voltage on their own line.

THE COURT: I understand, all right.

MR. PUCCIO: But in response to that other question --

THE COURT: So you are saying it might be an interception but it is not a violation of the law?

MR. PUCCIO: I don't think it is an interception, according to the judge who decided the Copeland case. He said, "I don't believe wire

tapping" -- well, in any event, he said he doesn't believe a wire tap is a violation of the Bell Telephone Act.

THE COURT: It requires interception and divulgence, that is what it says, but do you in this case dispute the fact that there is an interception?

MR. PUCCIO: May I have a moment?

(Mr. Puccio then conferred with Mr. Landry.)

MR. PUCCIO; You see, there are two different acts, your Honor, there is the Telephone Act of Ontario, which is discussed in the cases, and then there is the Bell Telephone Company Act.

Now, the Telephone Act of Ontario, as Mr. Landry explains it to me, covers interception and divulgence, the Bell only refers to interception, and the Court in the Copeland case indicated that a wire tapping was not an interception under the Bell Telephone Company Act.

THE COURT: I see, all right.

MR. PUCCIO: And on the other statute that counsel is asking for a stipulation on, 287 --

MR. IANNUZZI: Of the Criminal Code.

MR. PUCCIO: We would submit is not even

relevant.

MR. IANNUZZI: May I --

THE COURT: I thought I would get a concession which might eliminate some of the examination, but if you don't get the concession you might as well go on.

MR. IANNUZZI: Thank you, sir.

BY MR. IANNUZZI:

Q Now, Mr. Lavallee-- do I pronounce that correctly?

A Yes, sir.

Q Thank you.

When a telephone is in use and it is using the power permitted by the telephone company, and whether it be from Point A to Point B, if an additional line is added to that or several lines, say for instance several extension lines, so that the call is being listened to by several people, does that not drain power from the entire line?

A It is draining power if two apparatuses are on a hook at the same time, it is draining power.

Q So if you had a third listening device or a fourth listening device, this would drain more and more power in order to get the message to each person?

A If they are all on the hook at the same time.

(Cont'd on next page.)

CROSS EXAMINATION

BY MR. IANNUZZI: (continuing)

Q Yes, and when the suspect phone would be connected by a telephone call from a point over here, to the suspect phone, or let's say, the suspect phone received a call from the United States and this call is going this way, there's a certain amount of power being used on the suspect phone?

A Correct.

Q And when you use another extension onto it, it is draining a little bit more, is it not?

A Yes.

Q A little more power that would not be used if the phone was just hooked up from A to B?

A Yes.

Q In other words, the person calling from A, over here, to B, over here, A is paying for a certain amount of use of power, and B is paying for a certain amount of use of power, and this power is being drained off in a third direction not paid for by A or by B; is that correct? And not paid for because it is just an open line at 1, 2, 3, 4, 5, 6 and 7, that is not even connected to the telephone company?

A No, that is not correct.

I was following you on a direct connection.

I understand you were talking about a direct

connection from point A to point B, calling one another, and us being point C as an extension line --

Q Yes --

A (continuing) -- In that case, we are probably draining a few volts of power --

Q Yes --

A (continuing) -- This would probably refer to 1-B and Vegas PT in that for-instance, but not the way it is put on now.

Q Not the way it is put on now?

A Not at all.

Q Because of the fact you hooked it up through your switchboard?

A And the Little Old Lady.

Q And the Little Old Lady.

Now, you indicate that occasionally the fellow in the telephone who -- where you put CO -- What does that stand for?

A Central Office.

Q The fellow in the central office who checks the signals or the mechanisms occasionally seeing the mechanisms open, and knowing these are defective, occasionally would monitor the lines; is that correct?

A Yes, sir.

Q And see if anyone is on it?

A Exactly.

Q And since you have it open at headquarters, and nobody may be on the line, at that point he might disconnect you?

A Right.

Q And then you would have to make another phone call to this number, in which case you would go through again; is that right?

A Yes, sir.

Q Now, if he disconnected or monitored at that point and heard someone speaking, he wouldn't bother reconnecting it?

A He would assume that 1, 2, 3, 4, 5, 6, 7 people are using it.

Q Very well.

And, did you ever service the automatic mechanism, the Uher machine at headquarters?

A No, sir.

Q You did not?

A No, sir.

Q Do you know who did?

A Some of my men working for me.

Q For instance, who would they be?

A Well, that is three years ago, and I haven't got a memory for names.

Q Well, would it be someone other than yourself and Mr. Couture?

A It could be Aube that was here --

Q Yes --

A (continuing) -- and Couture, sometimes.

Q Well, thank back, and try to give us the names of all the people who serviced the machines?

A There was Pierre Fontine --

Q Yes --

A (continuing) -- and there is another gentleman, but I don't remember his name.

Q Another fellow?

A Yes.

Q Can you desciibe him for us?

A Five foot eight, 140 pounds, brown hair and fairly thin.

Q Anyone else?

A That's about it.

Q Now, when you say that you serviced this automatic machine, these machines would pick up any sound or parasite noise; is that correct?

A Yes, sir.

Q Is that correct?

A Yes.

Q And then it would record that?

A All these noises, yes.

Q And who would take the tapes off the machines.

A This I wouldn't know exactly. Exactly, I wouldn't know. Couture.

Q Was it yourself on occasion?

A No, no, because I was busy doing too many things besides that.

Couture was in charge of these lines, what we are talking about right here.

Q So, you didn't have anything to do with taking the tapes off the machines?

A No.

Q Did you listen to the tapes after they were taken out of the machines?

A Sometimes I would go into the audio room and listen to these conversations.

Q Would you make up logs or synopses?

A I was just assisting Couture or Aube, or they would call me for my own interest in these conversations.

Q I didn't get that. What do you mean by that?

A They would call me to go into the audio room and

put on a headset and listen to the tapes.

Q And by the way, have you ever met Frank Dasti?

A Only once, not officially, but non-officially.

Q Did you ever meet Frank Catroni?

A The same way, not officially.

Q What do you mean by "not officially"?

A They were taken to our headquarters at one time, and I was there to take pictures of them.

Q And that's all you did?

A Yes, and video tape.

Q And -- What?

A Video tape.

Q You took pictures of them?

A Yes, sir.

Q Were you in the same room or a different room?

A At one time in the same room, and another time at the back of a one-way mirror -- two-way mirror.

Q Back of a two-way mirror?

A Yes.

Q And if the power line, or if the power were to stop in the middle of a transmission --

MR. IANNUZZI: Withdrawn.

Q Is it possible that during a transmission the power could be affected in the transmission of the message?

A You mean that 48 volt that would stop coming at one time or another?

Q Yes.

A Would that be a reason -- Probably, like a broken wire?

Q Something like that.

A Nothing would work in that case.

Q Nothing would work?

A No.

Q And is it possible that something on the pole, or something on the line somewhere could affect the transmission, or at least the power?

A Like a short circuit?

Q Yes.

A Or an open line on the tip or ring side of an open line -- tip ground or ring ground?

Q All that can happen?

A Yes, sir.

Q Now, you, of course, didn't monitor the calls as they were coming in, did you?

A Of that particular suspect, it happened at one time that after I completed the call -- the whole installation -- there would be a telephone conversation --

Q I'm not talking about the time you installed it,

but after you installed it and the machine was set up at headquarters, you didn't sit there and listen to these machines, did you?

A Not particularly.

Q Did anyone?

A Yes.

Q Was there machines other than automatic machines?

A They were all automatic.

Q And the automatic machines would work by themselves?

A They could start by themselves quite easily.

Q And they could end by themselves?

A Oh, yes.

Q And they were working twenty-four hours a day?

A Yes.

Q And they were not always attended? Someone would come and take the tape off them at the end of a certain number of hours --

A At the end of the day, we would put on a new roll, seven and a half inches.

Q So they would be by themselves twenty-four hours?

A They would be by themselves at night for a long period. We had people there twenty-four hours a day.

Q Where do you mean "there"?

A In our audio room, but other periods, there was no one there from 12:00 midnight, or 1:00 or 2:00 in the morning until 6:00 in the morning.

Q And do you know which days there were people there, and which days no people were there?

A No, sir.

Q Are there any records to that effect?

A I don't know.

Q During a period of time when a person was making a phone call and the machine was activated, and if you got any of those difficulties you mentioned before that could cause a short circuit or grounded wire, the machine would stop also - the recording machine; correct?

A Any of these sounds, like a tip ground, would make a humming noise -- hmmmmm -- and the starter in our office would go as long as it was there on the line.

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CROSS EXAMINATION

BY MR. IANNUZZI: (continuing)

Q Suppose there was a cut wire or short circuit. Then, the machine would stop?

A It would make a noise.

Q And then it would not move?

A It would standby.

Q If the lineman from the phone company went to repair that line, and repaired it --

A Yes --

Q (continuing) -- and when he repaired it and connected it, it was another conversation going on, your machine would start again?

A Oh, yes.

Q Correct?

A Yes, sir.

Q Therefore, your machine could have the beginning of one conversation, and the end of a second conversation?

A That could happen.

Q Is that right?

A Yes, sir.

Q Let me ask you this: Was there anyone who was listening, say between --

MR. IANNUZZI: Withdrawn.

Q At the time that nobody was there monitoring the machine, when someone came to pick up the tape, the next day, there would be no signal or symbol or flag or anything on the machine indicating that there had been a stoppage?

A That's not correct.

Q Do you have something on the machine to indicate there is a stoppage.

A There is a mileage notation; how many inches per second that tape went through.

Q And if no one was listening to the conversation, no one could tell how many inches should have gone through the machine?

A Every night these tapes were brand new, starting from the beginning.

You come in in the morning, and there's two inches of tape recorder already rolled on the right side of the machine. Then you have so many inches to listen to.

Q Now in your conversations, where it start at Counter 0, and you pick it up and it is at counter 200, you would know there is 200 inches of tape used?

A Yes.

Q But in the example that I gave you, where the other conversation stopped --

A Yes --

Q (continuing) -- and the other started, it would be on the same reel --

A Yes --

Q (continuing) -- and the same counters --

A Yes --

Q (continuing) -- and the counter only indicates how many feet were used to record the first part, and the first part of the second part?

A Yes.

Q There is no way to tell how many inches were used on the first and second call?

A No.

Q And there is no person who listened to the two different conversations, is there?

A (No response)

Q Do you know how often, if at all, that happened?

A At one time we have twenty-five operations going on at the same time.

Probably, altogether, with the disturbing of the switches in the central office, dropping power, or cutting wires, and lines being transferred, I would say once a month, out of twenty-seven operations.

Q That would be that you know of?

A It was quite easy or minor to realize something

happened.

Like, you are saying a conversation would start, and the voice is continuing with a female voice instead of a male voice --

Q Suppose it was the same person?

A Often it wouldn't make any sense from one conversation to the other.

Q Often it wouldn't make sense, but it could?

A I would agree with you, it could.

Q It could be?

A One chance in a million.

Q That's your estimation?

A Yes, that's my estimation.

Q But it can happen that one man has been speaking on a telephone call, and continuing on a second call, and that would continue to the same tape, almost together?

A You are talking about oranges at one time.

"I bought three dozens of oranges and they didn't fit me." And the other conversation is talking about trips.

Q I understand.

In some of these conversations, if that happened, the only way you would be able to tell is from what was said. You wouldn't know in fact there were two conversations?

A Rarely that would happen.

Like I said, a very thin chance in the world.

The other problem we had, the telephone man checking the switch in the central office -- We call it trouble, and he would go pt, pt, pt, pt, pt, and then calling in, "Hello, hello," and then he would retreat.

Any humming like tip ground or ring ground, many problems could be identified.

Q Other than --

A (continuing) And the orange thing I talked of before.

Q Other than noises, if sounds were continuous with this same person, you would not be able to tell other conversations were not continuous from others, except if a layman got on -- You couldn't tell?

A I don't understand. Are you asking me?

Q I'll withdraw it and ask a different question.

Supposing someone were to cut in on the line and put on voices that were not coming from the suspect phone. That could also be done, couldn't it?

A Yes.

Q Somebody could place a tape recorder into that and play from one tape recorder into yours?

A That could happen.

Q You wouldn't know that difference either?

A Maybe not.

Q When you hear voices, when you pick up the tapes the next day, you didn't listen to the conversations recorded? You are just listening to a recording; isn't that correct?

A Yes, sir.

Q And you don't know that that recording was actually spoken by a live person on the other end, or if someone --

MR. PUCCIO: Your Honor, I object to this.

THE COURT: It is all argumentative. Anything is possible.

MR. PUCCIO: Yes. I will stipulate that anything is possible.

MR. IANNUZZI: I won't accept that stipulation.

THE COURT: That is worthless, but in my humble opion, so are the last two questions.

CROSS EXAMINATION

BY MR. IANNUZZI: (continuing)

Q Do you know if anyone in the middle of the night, when nobody was there -- that is to say, none of your personnel, -- went in and changed the tape at any time?

A Of our knowledge, nobody went there and changed the tape.

Q But you don't know if anybody did? You don't know that of your own knowledge?

A Well, I just said that as far as our knowledge is concerned, nobody went in there.

Q Can you testify, as a matter of fact, of your own knowledge, that nobody did?

MR. PUCCIO: I object.

THE COURT: I will allow him to say it, but I ask the witness to make sure he understands the question.

That means you had both eyes on that board seven days a week, twenty-four hours a day for the entire period of the recording. That's what Mr. Iannuzzi means by "know."

MR. IANNUZZI: I just want to know from his own observations.

THE COURT: So, you know from your own observation that nobody went in except the two people?

THE WITNESS: In the manner you asked the question, I wouldn't know.

THE COURT: Of course.

Q Now, after the tapes were taken off, were they erased?

A The next step -- The way they were doing it, I don't know, exactly.

Q In other words, somebody else did that part?

A Couture was taking care of that.

Q Did you -- I'm sorry if I asked this before, but -- Did you sometimes put the tapes on, though?

A No.

Q Never?

A Never.

THE COURT: Were the tapes identified in any way? Were they marked when put on, and then was it noted that this was the date that was put on when it was taken off?

THE WITNESS: I suppose so.

THE COURT: You don't know that?

THE WITNESS: I didn't do it myself.

THE COURT: You didn't do the recording?

THE WITNESS: No, sir.

THE COURT: You see, sometimes an answer by someone who knows might take care of all this questioning.

I don't know whether there is a manner of housekeeping in which there were some serial numbers or other markings on the tapes, and if anybody can come to court and say, "Yes, these were the tapes on the recording machines."

MR. PUCCIO: We will have testimony --

THE COURT: Is that what you say was done here?

MR. PUCCIO: I understand there was another gentleman who put the tapes on the tape recorder, and we re-

moved them --

THE COURT: I'm asking something else.

Was there anything put on the tapes when they were first put on so someone could say, "This is the tape I put on. It was blank, and then I took it off, and there was recordings on it."

Similar to a license plate on a car --

MR. PUCCIO: I don't know the precise system, but there was some system.

MR. IANNUZZI: Can we know who did that so we can save time?

MR. PUCCIO: Bernard Couture, the next witness.

THE COURT: This witness will be available, I hope, when Mr. Couture completes, so if you don't get the information from Mr. Couture, then you can get it from this witness, who obviously does not know anything about the record-keeping of the tapes.

Q The telephone call on January 16, in the hotel, in connection therewith, of the three public telephones available, it is your testimony that the Police occupied two of them intentionally?

A Yes, sir.

Q So that the public could not use them?

A Yes, sir.

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Q Was the approval of the telephone company obtained for that?

A You don't need approval. It is a pay phone.

Q Were you making telephone calls?

A There's no law that states that you are not allowed to grab a receiver on a pay phone and make believe you are making a call.

Q Is that what was done?

A That can be done.

THE COURT: They did that onee in a picture, I think it was"Lunch at Tiffany's"--

MR. IANNUZZI: "Breakfast at Tiffany's" --

THE COURT: (continuing) -- and I don't think the director ever got permission for that.

We will take a recess.

(Recess taken.)

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MR. PUCCIO: Your Honor, we have consulted on this and we don't feel that we are going to finish today even if we sit late.

THE COURT: I can't go beyond six. The reporters say they will go until six.

MR. PUCCIO: I would think --

THE COURT: Maybe we can finish the other gentleman and just have the legal issue.

MR. IANNUZZI: Judge, what we had talked about was simply this, if your Honor please, because of the fact that we are going to have to come back, apparently, and we have to pick another day, to drive ourselves to get another half hour, that isn't going to accomplish much. So we have talked about perhaps just finishing with this witness and then coming back.

MR. PUCCIO: Probably that's about as far as we can go. Mr. Klar will be away between the 9th and the 16th, so I don't imagine we can meet between the 9th and the 16th of December.

THE COURT: He is going to be away --

MR. KLAR: You had mentioned the 13th of December.

MR. PUCCIO: The 13th is during that period.

THE COURT: When will you be away?

MR. KLAR: From the 9th to the 15th.

MR. PUCCIO: I believe that if we can select a date today, fine, but if you give us notice, 24 hour notice, I think we could probably --

THE COURT: Well, I would think that --

MR. IANNUZZI: The difficulty with that may be other trials intervening, even with notice.

THE COURT: I think you need a full day. I will make it the Christmas weekend.

MR. PUCCIO: Which date would that be?

THE COURT: Probably Friday, because I don't think anybody will want to work on Friday. I will probably have difficulty getting lawyers in.

MR. PUCCIO: Is that the 26th?

THE COURT: The 26th is Thursday, the 27th is Friday.

MR. ROSENTHAL: Your Honor, I know I am due to start a trial December 10th.

Now, the problem with that trial is, your Honor, that my client might try the case and might be very obstreperous, I know this beforehand, having --

THE COURT: Mr. Fruchtman is the attorney of record, isn't he?

MR. ROSENTHAL: I know that. He will be away

the 12th and I will be handling the hearing on that matter. I might be able to get away that day. There might be a problem that doesn't occur, but I want to inform the Court that I am going to start a trial in the State Court in Kings County December 10th.

THE COURT: Which would you prefer, Thursday the 26th or Friday the 27th?

One moment.

(REcess.)

THE COURT: Let's get through with today.

MR. IANNUZZI: We can thrash this out at the end of this witness, perhaps.

THE COURT: That's right.

MR. ROSENTHAL: The holidays present no problem to me. I am going to be here, but Mr. Iannuzzi and --

THE COURT: First of all, what is your client's name again?

MR. ROSENTHAL: Mr. Oddo. He is not here.

THE COURT: Were any of his conversations tapped?

MR. ROSENTHAL: Yes.

MR. PUCCIO: Many of them.

MR. ROSENTHAL: What is allegedly his voice, what the people will maintain is his voice is on the

wires.

MR. PUCCIO: Mr. Patenaude informs me that his people will be available on the 27th. We would like to finish with Mr. Lavallee who is no longer employed by the Quebec Police Force.

MR. IANNUZZI: There is another problem, and I don't know how to solve it exactly, and that is we have some minutes that were taken of the 14th and they have been certified by the Court Reporter --

THE COURT: It says the 14th, but I thought the hearing was the 11th.

MR. IANNUZZI: There was discussion on the 11th and testimony taken on the 14th. There was both days.

THE COURT: It is not certified?

MR. IANNUZZI: It is certified by the reporter, but for use in a foreign jurisdiction, I think we need an exemplification. If your Honor certified that the reporter is the reporter --

THE COURT: Our clerk will exemplify it.

MR. PUCCIO: The Judge has to say that the Clerk is the Clerk and the Clerk has to say the Judge is the Judge.

THE COURT: What jurisdiction is going to be used?

MR. IANNUZZI: I don't know. Mr. Miranda wanted to have --

THE COURT: Have all the minutes?

MR. IANNUZZI: Just the 11th and the 14th, I think. There are two days, Judge.

THE COURT: The clerk has not even certified these.

MR. IANNUZZI: The stenographer did our copy, sir.

THE COURT: Maybe I ought to leave this with you. Are you going to want any other transcriptions exemplified?

MR. IANNUZZI: I don't think so.

THE COURT: First the original must be filed, before it was filed the Official Court Reporter must certify that it is a true and accurate copy.

MR. PUCCIO: IN that connection, your Honor, I understand there are many spelling errors and typographical errors --

THE COURT: Why do you need it today? Why can't it be sent up to him?

MR. IANNUZZI: I have had the reporter study this and sign the copy.

MR. PUCCIO: I think the intent is to use this

in connection with another inquiry in Canada having to do with organized crime, and I would object to the exemplification of this as the true transcript at this time.

THE COURT: I don't know how you can if the Reporter certifies it is correct.

MR. IANNUZZI: I have already done that.

THE COURT: The original may be wrong. The notes are compared with the transcript and then he certifies that it is accurate.

Why does he need it today?

MR. IANNUZZI: He is going home and he is here.

THE COURT: He will be back here. What he can do is take that copy back. He can use it for what he wants to use it for and bring it back again. By the time you bring it back the Reporter shall have checked it with his notes and then I will have my full force in on that particular day and you will go right downstairs and have it exemplified.

I don't know that anybody is downstairs now. I thought we had a full staff on but I found out we don't.

MR. IANNUZZI: You thought other judges were working as hard as yourself.

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THE COURT: We have other judges working. /Some judges don't have a case and the courtroom deputy felt it was a good time to take off. They never get overtime, they get compensatory time that they can never take. They took off. Why not?

Mr. Lavallee, will you please resume.

CROSS-EXAMINATION

BY MR. IANNUZZI:

Q Mr. Lavallee, I was asking you in reference to the interception at the hotel on the 16th of January, and you indicated that the two booths were being used by policemen, perhaps making believe that they were making phone calls; is that correct? That was not with the knowledge of the Bell Telephone Company?

A I didn't ask them.

Q Did anyone, if you know?

A I don't know. The police officers themselves would know.

Q Who were those police officers?

A I don't know their names.

Q Are they regular members of the Force?

A There was an officer in the lobby at that time, but which one I don't know.

Q In any event, that particular phone that you

did allow to be vacant, you went to the basement of the hotel; is that correct?

A Yes sir.

Q And you found a pair of wires that belonged to that particular phone; is that correct?

A Yes.

Q And that was in the terminal box in the basement of the hotel?

A Yes sir.

Q Did you have the permission of the hotel to go there?

A No.

Q Did you have the permission of the Bell Telephone Company to go into its terminal box?

A No.

Q Did you at anytime, in connection with that particular telephone conversation, have the same set of the OP or the CO or the HQ or anything like that?

A No.

Q Not even a little Old Lady?

A No sir.

Q This was a direct use of the wire as it came out of the terminal box?

A Yes sir.

Q Directly into a tape recorder that you used?

A Yes sir.

Q And did you have the permission of the Telephone Company to use their wires to gain the transmission?

A No sir.

MR. IANNUZZI: I have no further questions at the moment, sir.

THE COURT: Any redirect?

MR. PUCCIO: I have some redirect.

THE COURT: I'm sorry, Mr. Klar.

MR. KLAR: Yes, your Honor.

CROSS-EXAMINATION

BY MR. KLAR:

Q Now, Mr. Lavallee, you testified, did you not, that trying to find a proper line, whether it be up on the telephone pole, the terminal box there, or downstairs in the basement, you had to clip certain casings; is that correct?

A Yes.

Q Do you recall with respect to Vegas 1B how many casings you had to clip?

A That's too many years ago now. Ten, twenty, fifty, I don't know.

Q With respect to VEgas PT, how many casings did you have to clip?

A I don't know, I don't remember.

Q Possibly 10, 20, also.

A Yes.

Q When these casings were clipped, they were permanently damaged, were they not?

A Probably.

Q Any restitution made at all to the Bell Telephone Company for the damage caused to the casings?

A No sir.

THE COURT: What was the nature of the damage?

THE WITNESS: Well, the dampness of the air would start to force some oxide on the copper.

THE COURT: Was there a break in the insulation?

THE WITNESS: Yes, there was a break in the insulation.

THE COURT: In every case?

THE WITNESS: Most of them, yes.

THE COURT: The piece of the alligator clips would go through the casing and actually touch the wire?

THE WITNESS: Yes sir.

BY MR. KLAR:

Q Do you know of your own knowledge whether or not the Bell Telephone Company was in contact with anyone with

respect to any damage that might have been caused on their property?

A They have thousands of repair calls to be done every year. On what reason I don't know.

Q With respect to Vegas 1B and PT you have no knowledge?

A That they were called? No, I don't think so.

Q With respect to the Little Old Lady, did you have occasion to go back periodically and check the installation at the terminal?

A No, I didn't have to.

Q You didn't have to.

A No.

Q Why was that?

A Because it was working okay.

Q You knew it was working because the transmission was being picked up at the CO, is that correct?

A That's right.

Q With respect to the open line, and the open line was at the CO, is that right?

A From the CO to the right side of the Little Old Lady.

Q And through the OP and to the right side?

A Not through the OP.

Q Just directly to the --

A Yes.

Q And you have also stated that the Bell Telephone Company was not being compensated for any of the connections or communications that were going through the open line; is that correct?

A Oh, yes, they were compensated. I ran Line Number 123-4567 for example.

Q That was the phone connection, but when that was set onto the Little Old Lady, that in effect -- you have already stated that 123-4567 was no longer really in operation, that it was just an open line and calls were going through with no compensation.

A Don't misunderstand the name of a telephone as an apparatus, and the line telephone is something else, and the apparatus is connected to the line.

What we use is the line. We didn't need the apparatus.

Q Was there any --

A We were saving money for the Bell Telephone Company because they were not using their new phone. When they came a year after that's when it was still new.

Q Was this a special direct line which required a special tariff to be paid?

A A regular tariff. They call it one hour, one residence telephone.

Q When this connection was made then, the suspect line became a party line, is that correct?

A No.

Q In effect you now had a third party listening in on the phone, so it becomes a party line?

A Technically speaking as an ex-telephone man it is not a party line.

Q In effect though, anytime you have a third person being connected into an existing line, third party who is not paying -- whether they are paying the charge or not, it is in effect a party line, isn't that correct?

A It's not a party line. You might now want to believe me but it's not a party line.

Q Let me ask you this question: the device, this automatic recording device, this was set up to record each of the calls that came in, is that correct?

A Yes.

Q Without differentiation as to who made the call; is that correct?

A That's right, yes.

Q You have already stated you yourself did not monitor directly any of these calls, is that right?

A 698

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A The majority of them, not at all.

MR. KLAR: May I have one moment?

THE COURT: Yes.

(Pause.)

Q With respect to the use of the automatic device, is it possible that if a call was placed and the recording was turned on that a portion of that initial recording, the initial conversation could be missed and that either a second, two seconds, ten seconds or a minute might go by before that device would activate and actually pick up the conversation?

A The device, the audio-starter would be wrongly adjusted, it would then miss --

Q It would malfunction, would it not?

A Yes.

Q And if it did malfunction initially, or if it malfunctioned at the end and shut off too quickly, you would really have no way of knowing whether or not there was a malfunction; if the device happened to malfunction from time to time and bits and pieces of conversations, or shortened conversations were being intercepted, you wouldn't know that, isn't that correct?

A There was a way to find out if it was missing first.

Q How would that be?

A By getting a ringing sound in the incoming calls and getting a dial tone sound on the outgoing calls. If that is missed, then it's in trouble.

Q And the --

THE COURT: So the recording itself would have the ringing or the dial tone?

THE WITNESS: Yes sir.

MR. KLAR: I have no further questions.

(Continued on next page)

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THE COURT: Mr. Rosenthal?

MR. ROSENTHAL: No questions.

MR. IANNUZZI: I have a couple more, Judge.

THE COURT: Let's have redirect first, if any.

MR. IANNUZZI: Certainly, sir.

MR. PUCCIO: Could I have these two photographs marked, your Honor? These photographs were taken during the recess, your Honor.

THE COURT: They will be marked in a short while.

MR. IANNUZZI: Since we are going to agree on them, we can hold off until the clerk comes.

THE COURT: My law clerk is acting as a court room deputy today, and is just doing some other work in chambers, that's all.

Why don't you proceed with your questions?

REDIRECT EXAMINATION

BY MR. PUCCIO:

Q Mr. Lavalle, as I understand it, you were -- with respect to Vegas 3, 5, 7, 8, 9, 11 and 12 you were renting a telephone line and paying for the use of that line; is that correct?

A Yes sir.

Q As you have already indicated, you were not using the instrument, the actual telephone that was installed by the telephone company at the observation post?

A No, we were not using it.

Q By the way, are you familiar with the way the telephone company billed for the use of the telephone during that period of time, 1970 and 1971?

A We always been billed by the month, no mat ter how many calls, incoming and outgoing calls you are doing, this is --

Q When you say incoming and outgoing calls, you are referring to local calls, I suppose; is that correct?

A Yes, local calls.

It's a flat rate for a month.

Q So that a subscriber would rent a telephone line or have a telephone installed in his home and he would only pay per month and not pay for the amount of calls -- in any relation to the amount of calls he made?

A He could make a thousand calls a month, like he could make one call a month long. Same price.

Q The price would still be the same per month, is that correct?

A Yes sir.

Q I would like to direct your attention to the

diagram that you have drawn on the blackboard.

You have a line running from the terminal point for 123-4567 through the observation post, through the central office and into your headquarters.

Does that accurately depict the connection between your headquarters and the terminal point for line 123-4567, or is there a simplified way of expressing the same thing?

A Yes. I probably missed on that myself.

THE CLERK: Marked for identification Government Exhibit 6 and 7.

(So marked.)

A This apartment house here of wires I disconnected, left it doing nothing here. My call is not directed to the apartment but instead directed to the pair.

Q So by disconnecting this set of lines right here, you are indicating that the telephone instrument in the rented apartment is just not being used?

A That's right.

Q But what you are using is the line itself, which emanates from this terminal point?

A Yes sir.

Q Is that correct?

A Yes sir.

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THE COURT: The terminal point to the central office, because the exhibit that will be marked does not show the modification.

MR. PUCCIO: We will have another picture taken, your Honor, of the exhibit as modified.

THE COURT: Will you mark that for the record. The exhibits have been marked 6 and 7.

MR. PUCCIO: When we conclude, your Honor, I will have another picture taken.

Q As you have already indicated, the Quebec Police Force is paying for the use of this line, without the telephone instrument located at the observation post?

A Yes sir.

Q And I assume that the Quebec Police Force is also paying for the use of the phone -- for the line, actually, and the phone at the headquarters, which is used to call the other line 123-4567; is that correct?

A Yes sir.

Q So that your office was paying for the line itself and also paying to call that line?

A Yes sir. And the price of the observation post rent.

Q The money that was necessary to rent the apartment was also expended by the Quebec Police?

A That's right, sir.

Q Now, during the course of your operation of Vegas 3, 5, 7, 8, 9, 11 and 12, were you draining any power at all from any of the suspect lines?

A Honestly, as far as I am concerned, we were not draining power at all.

Q Let me contrast that for a minute with Vegas PT and Vegas 1B where you used the drop line method.

A Yes, sir.

Q And in those cases and the Lorenshion Hotel hookup where you connected directly into the terminal post in the basement, in those three instances were you draining power from the, we will call it, suspect line?

A Yes.

Q In those cases you were?

A Yes sir.

Q Do you have any idea how much power in those other three cases you were draining?

A .5 volts, approximately.

Q How many volts were in each one of those lines, Vegas 1B, PT and Lorenshion Hotel?

A 48 volts.

Q A half of a volt?

A Mind you, a telephone line can still work at

20 volts, very nicely.

Q By the way, Mr. Lavallee, would you be able to explain to us why that box you referred to as the little old lady was called the little old lady?

A Well, you know, little old lady always peeks through their window, and as honest people they always know what is going on around their house and on the street and they are the first one to call the police officer if anything looks suspicious.

Q And that's why you called it the little old lady?

A Yes sir.

Q Was there any physical contact between the line you rented, for example, here 123-4567, and the suspect line?

A Physical contact, no.

Can I make another drawing?

Q Yes.

A There is no regulation that specified that we can hang a piece of wire from the terminal point, and without using it there is nothing wrong about that.

This is what we have done here because using this coil, these wires are not used at all, they are not connected at all, they are just side by side and it is

just like they are returning into one another into a coil. That was it.

The other apparatus, the other piece of material was just to answer our line automatically.

Q Of course, if the two lines were connected it would short circuit, is that right?

A Oh, yes.

Q Did you use any of the phone service or power that was being paid for by the suspect?

A We could use other lines.

Q You never did?

A Because we were -- we were not taking a risk of getting caught by listened on to.

Q Were you using the rented line to receive any calls or to place any calls, or were you just using it to monitor, to monitor what was being said over the suspect phone?

A Just to monitor in this case whenever the installation has been completed.

MR. PUCCIO: I have no further questions.

RECROSS-EXAMINATION

BY MR. IANNUZZI.

Q Sir, perhaps you would stay there for a moment because I am going to ask you a question in reference

to it and I will save you a trip.

In the modified version of your diagram you seem to have discontinued the lines coming from the OP to the terminal box; is that correct?

A Yes sir.

Q Is that in effect the line that goes through from the CO to the terminal box, instead of it going to the OP you have now taken it directly --

A What happened is this line always went there first and then to the OP afterward.

Q I see, in other words, the line from the CO was the service from the Central Office to the terminal box?

A Yes sir.

Q And then the OP would be -- the regular phone at 123-4567 would be fed from the terminal box?

A Yes sir.

Q So what you did in fact was totally disconnect the OP and the 123-4567; is that correct?

A Yes sir.

Q So therefore the phone that you had there, and the line going to the terminal box, and, indeed, the apartment itself, were totally unused?

A Unused.

Q Now, did you have any authority to make that change from the telephone company?

A Not from the telephone company.

Q The telephone company in fact did not even know that you had made that change?

A No.

Q Your testimony is that a subscriber has an unlimited number of phone calls in Quebec; in other words, for the same charge you can make as many calls as you want?

A Yes sir.

Q And is there a method -- you think you can sit down. I am sorry for giving you directions.

MR. IANNUZZI: I appologize, Judge.

THE COURT: That's all right.

Q Is there any method that is provided for by Bell Telephone in the aid of the police function that they set something up like this for you?

A Not at all.

Q Have you ever gone to Bell and asked them to cooperate in the public interest for this?

A Yes.

Q And?

A They laughed at me.

Q They laughed at you?

A Yes.

Q They would not let you use your equipment for that purpose?

A No sir.

Q In using a fictitious name to rent a telephone, was that for the purpose of deceiving the telephone company so that they did not know this was happening?

A Yes sir.

Q And in using the phone 1234, and renting the phone as if you were an ordinary subscriber, that too was for the purpose of deceiving the telphone company so they didn't know this was going on?

A Yes sir.

Q And in the use of the apartment under a nother fictitious name, that too was for the purpose of deceiving the telephone company from realizing that their phone lines were being used in this fashion?

A And the supervisor of that building, too.

Q Well, the building in which the apartment was, was that in the same place as the suspect phone was?

A Sometimes.

Q And sometimes not?

A Sometimes not.

Q When it was not you didn't have to deceive the superintendent of any building at that point?

A We were deceiving them, too, to make sure.

Q So, in other words, this entire operation was a fictitious operation for the purposes of decieving your actual intent; is that correct?

A Yes sir.

Q And the whole method of using the phone and the lines was also fictitious to deceive the telephone company?

A Yes sir.

THE COURT: I think the law tolerates a certain amount of deception in its investigatory work. I think the Courts have said that.

MR. IANNUZZI: I don't know about Bell Telephone, though, Judge.

THE COURT: No, Bell Telephone is interested in its business and it doesn't want to loose any customers.

MR. IANNUZZI: No sir. Not even 1234.

THE COURT: That's right.

Q In having the induction coil, the power that you were using, whether it be excess power or power that would ordinarily be lost from the ordinary use of the

telephone, was in fact power that belonged to the suspect line?

A It would not work otherwise, yes.

Q In other words, the power that the induction coil worked from, whether it was wasted power or not, was not your power, is that correct?

A Yes, it is as correct as I am breathing your air and you are breathing my air in this room.

THE COURT: He says it is the same as you breathing my air and I breathing your air.

Q I understand. But it was not the air that you were breathing from 123-4567 that you were paying for, it was air, if we want to use that example, that belonged to the suspect phone.

A It belonged as anybody that is -- that is close enough to these wires to pick up anything.

Q And you put your wire there purposely so that you could be close enough to take the power from that line?

A Sure.

Q Do you know if the telephone company was required as a result of the clipping through the insulation that you did on the many pairs that -- before you found the right pair, do you know whether they had to repair those phones thereafter?

A Like I said before, there are a thousand calls every month, for what I don't know, but maybe some of these.

Q For whatever reason that they have ordinary problems with phones, do you know if you created some additional ones by cutting through their wires?

A It usually takes about five years of corrosion through the blister that I have done in the insulation to finally get a wire to cut up.

So now that I clipped they are going to start to be in trouble.

Q So in other words, you have helped the process of the destruction of the telephone wires?

A Yes, some way or another, yes.

Q On many telephone lines?

A Yes, for good reason.

Q Your reason?

A Yes, that's right.

Q And you indicated that you did not go back to check the little old lady out?

A No. Whenever we were working, okay, that was it.

(Cont'd on next page.)

Q And did anybody go back or were you in charge of that aspect of things?

A Well, at the end we had so much to do that somebody else would go and remove it.

Q But before the removal of that, I am talking about the checking of it, etc., you were in charge of that?

A Yes, sir.

Q And nobody went to do that?

A No, sir.

Q And whenever the recording recorded, it would record just what would come in over the wires; correct?

A Yes, sir.

Q And if anyone had changed the lines that you had been hooked up to, that is to say after it went to HQ and CO and the terminal box and the Little Old Lady, if someone had changed these two wires (indicating), changed the line, changed the line to another set of lines, to another set of lines, your machinery would continue to record whatever came in on that new line?

A Yes, the same as if the subscriber, the suspect, would have changed his phone number.

Q Yes.

A Yes.

Q Then you don't know of your own knowledge as

you sit here now whether anybody changed those?

A No, sir.

MR. IANNUZZI: I have no further questions.

THE COURT: Anything further?

You may step down.

MR. PUCCIO: I just have one further question.

THE COURT: Here is the one further question.

REDIRECT EXAMINATION

BY MR. PUCCIO:

Q Again with respect to the disconnection of 123-4567, you are disconnecting here, based on your testimony, the instrument and not the telephone line itself; is that correct, sir?

A Yes, sir, that is correct.

MR. PUCCIO: All right, all right, thank you.

THE COURT: Well, that is amazing, Mr. Puccio.

MR. PUCCIO: I only asked one question.

THE COURT: It certainly was, that is amazing.

Go ahead.

RECROSS-EXAMINATION

BY MR. IANNUZZI:

Q And if someone had changed this (indicating), you would not be recording the terminal or the suspect phone that you had originally set out to record?

A We would be recording somebody else.

THE COURT: Anyone else?

MR. KLAR: No, your Honor.

MR. ROSENTHAL: No, sir.

(The witness was excused.)

MR. PUCCIO: May we have a picture of the exhibit as modified.

THE COURT: Yes, please do that.

That will be Government's Exhibit 8.

MR. PUCCIO: I have Government's Exhibit 6 and 7.

THE COURT: This will be 8.

MR. PUCCIO: 8.

THE CLERK: Government's Exhibit 8.

THE COURT: May I see how they come out.

MR. PUCCIO: Yes.

(The exhibits were handed to the Court.)

THE COURT: It must be a special camera.

MR. PUCCIO: It is a long exposure.

THE COURT: Gentleman, this matter is set down for Friday, December 27th, at 10:00 o'clock,. and in all liklihood if all the pretrial hearings are not completed by then, it will have to go over to January 2nd. Now that is cutting pretty close.

I don't know whether I will have time to

4 write on it, I think it is a matter that I should write on, and I don't know what the Government will do if they get an adverse decision.

MR. PUCCIO: We will appeal.

THE COURT: Then we can't try the case.

MR. PUCCIO: That was our purpose in having this all ahead of time, your Honor, we considered the tapes to be that significant.

THE COURT: All right.

If I can, you will get 24 hours notice.

MR. PUCCIO: I would appreciate it, your Honor, that you at least get in touch with us, if you can do that, because I think although Mr. Landry and the other gentlemen will make themselves available, it will be much more convenient if it were done during that holiday period.

THE COURT: The trouble is that it cannot be -- when is it going to be, the 9th and the 16th?

MR. PUCCIO: They also will have a transportation problem at that time, your Honor.

MR. IANNUZZI: Those are the holidays, Judge.

THE COURT: There is a very very slight possibility that the case on trial before me will end before Friday, by before Friday I mean possibly Thursday, and I might learn that on Monday or Tuesday.

MR. PUCCIO: Could we possibly maybe split it up in a couple of afternoons, starting at 2:00 o'clock or 3:00 o'clock? I hate --

THE COURT: The only afternoons I have are those that I have on motion days, and I think I have something for each of the motion days in December.

Don't I?

THE CLERK: They are full.

MR. PUCCIO: All right.

THE COURT: I have other hearings.

I can't do it.

I can suggest only one thing, and that is a Saturday, and that means that I can do it tomorrow, but that also means we will have to get the consent of the reporters whose patience and endurance I have taxed, but if you are willing and if they are willing I am willing. But I will not do it and I will not in any way make any order, either express or imply, or say anything which might be understood that I wanted them to come in: If they want to do it really voluntarily then I will, too.

MR. PUCCIO: I don't want to say anything either, Judge, but I feel the same way you do.

THE COURT: Mr. Sulzer was brave enough to say, I don't want to go beyond six.

I know the last time I had a Saturday session nobody was very happy about it, but I don't know how you feel about it, Mr. Karr, or the others.

MR. KLAR: If I might be heard on that as far as tomorrow I do have, because of the loss of yesterday and today, I do have clients coming into the office at 11:00 o'clock tomorrow morning to sign a separation agreement.

THE COURT: That is a minor problem.

MR. KLAR: A minor problem?

THE COURT: To the Court it is a minor problem.

MR. KLAR: I understand, I just bring it to the Court's attention.

MR. ROSENTHAL: What about the people who want to get separated?

MR. KLAR: One of the parties is leaving the state on Sunday morning.

MR. IANNUZZI: Well, we will see, maybe you can work something in next week.

THE COURT: That is a gamble, I don't know, the only days I have off are Saturday and Sunday.

MR. IANNUZZI: I have been on trial for two months now.

MR. PUCCIO: Could we have these two photographs marked?

THE COURT: Yes, 8 and 9.

THE CLERK: Two photographs marked as Government's Exhibit 8 and 9.

THE COURT: Since there is no demonstration of affection for the Saturday session, I will see what happens to the case on trial.

MR. ROSENTHAL: I do know I have a case starting on the 10th, it is a rock star case.

THE COURT: I know that Mr. Klar is going to be out from the 9th to the 16th.

MR. ROSENTHAL: Anytime before that I have nothing, aside from court calendar appearances.

THE COURT: There is nothing further, is there, gentlemen?

MR. PUCCIO: No, your Honor.

THE COURT: If I knew we would just take an hour or two, I might start at 3:30 on Monday.

MR. IANNUZZI: It is not likely to take that short.

THE COURT: I can't have a half day session for the jury when they come in.

MR. IANNUZZI: Is that on 24 hour notice?

THE COURT: The 27th is definitely, but it may be before.

MR. IANNUZZI: The 27th?

THE COURT: Of December.

We have very few days left before January 6th.

Incidentally, I have found the other exhibit and they are in separate files and I think they ought to be kept in there.

MR. PUCCIO: All under the same number?

THE COURT: All under the same number, yes.

All right, gentlemen.

(At 5:20 o'clock p.m. a recess was taken.)

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

FRANK COTRONI, FRANK DASTI and PAUL ODDO,

Defendants.

73-CR-898

United States Courthouse
Brooklyn, New York

December 27, 1974
10:00 o'clock A.M.

B e f o r e :

HONORABLE JACOB MISHLER, Chief U.S.D.J.

MICHAEL MIELE
OFFICIAL COURT REPORTER

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Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: THOMAS PUCCIO, ESQ.
Assistant U.S. Attorney

JOHN N. IANNUZZI, ESQ.
Attorney for Defendant Cotroni

MICHAEL KLAR, ESQ.
Attorney for Defendant Dasti

GERALD ROSENTHAL, ESQ.
Attorneyfor Defendant Oddo

A 724

MR. PUCCIO: Your Honor, Mr. Iannuzzi, I don't see him here right now, both wrote and telephoned me concerning Claude Lavallee, who was a witness, that we concluded with at our last appearance, and asked if I could arrange for Mr. Lavallee to come back.

Mr. Lavallee is in court and has consented to return and answer any additional questions that Mr. Iannuzzi might have. He is no longer a member of the Canadian police force.

THE COURT: All right.

MR. KLAR: With the Court's permission, I should like to respectfully request that I be permitted to join in the motion submitted by Mr. Iannuzzi on behalf of Mr. Cotroni.

THE COURT: You mean the motion set forth in the letter?

MR. KLAR: No, I have a notice of motion and a motion with an accompanying memorandum of law submitted to your Honor.

THE COURT: Oh, I have it now.

MR. KLAR: I wish to join in on that motion.

THE COURT: Well, suppose we get through with testimony.

You have a witness here that Mr. Iannuzzi

asked for?

Suppose you get through with that.

MR. PUCCIO: Mr. Lavallee.

C L A U D E L A V A L L E E , having been previously duly sworn, resumed the stand and testified as follows:

THE COURT: You understand that you were previously sworn and you are still under oath?

THE WITNESS: Yes sir.

THE COURT: Now, does the Government wish to wait until January 6th to sever against the defendant Oddo? The latest letter indicates that there is no chance that we might reduce the amount of time for these --

MR. PUCCIO: Well, my only thought is that these motions pertain to Oddo and if he is eventually to be tried we would have to have another hearing, so that his lawyer could cross-examine, I suppose.

THE COURT: But you agree there is little likelihood that --

MR. PUCCIO: Based on the last letter, your Honor, yes --

THE COURT: Unless there is an adjournment?

MR. PUCCIO: I don't see any likelihood of another adjournment.

I received the last letter.

Your Honor, the exclusion order is still in force. I would ask that any witnesses who are present in the courtroom to withdraw.

THE COURT: All witnesses on this hearing please leave the courtroom and take seats in the witness room, if you wish.

MR. PUCCIO: I am asking Mr. Patenaude to stay. He has already testified.

MR. IANNUZZI: I know Mr. Landay is here and he is the attorney participating in some fashion and he is permitted to remain, and I have a Mr. Ray Marnard in the same fashion here --

THE COURT: Any objection?

MR. PUCCIO: No, but I would like the other gentleman identified for the record.

A VOICE: Mr. Marnard.

THE COURT: Are you Canadian counsel?

MR. MARNARD: Yes, your Honor.

THE COURT: Have you represented Mr. Cotroni or Mr. Dasti?

MR. MARNARD: Never, your Honor.

THE COURT: All right, go ahead.

You may be seated.

MR. PUCCIO: Your Honor, I have some additional questions that I might ask Mr. Lavallee and perhaps I could proceed first.

THE COURT: Go ahead.

MR. PUCCIO: We have some slides which were taken at the last appearance and I would like to have them marked for identification and have Mr. Lavallee describe and identify them for the Court.

THE COURT: All right.

MR. PUCCIO: May we set up the screen, your Honor?

THE COURT: Why don't you set the screen up over here?

MR. PUCCIO: All right.

I think in the jury box might be the best place, your Honor, for the record.

Now, Mr. Stein of the Criminal Division of the Department of Justice is also present in the courtroom and is at Government's counsel table.

THE COURT: Did you read this motion, Mr. Puccio?

MR. PUCCIO: Yes, your Honor, we have a draft. Much of that material --

THE COURT: It is an amazing motion, something

I have never seen before.

In other words, before the Government can go to trial it should take a motion picture of what happened before the grand jury, unless the indictment is no good.

You have to prove there were no authorized persons before the grand jury --

MR. PUCCIO: I have an affidavit which I filed on that.

THE COURT: I hope you have some law, Mr. Iannuzzi, because I think you put in jeoparay every indictment in this district in the last 106 years.

MR. PUCCIO: I have a response to the motion.

THE COURT: I know it is heavy. I don't know how significant it is. There is an awful lot of reading to do.

MR. PUCCIO: We have read it.

THE COURT: Is this a form you used someplace?

MR. IANNUZZI: Absolutely not.

THE COURT: Just for this case?

MR. IANNUZZI: Including the brief. I think your Honor has a brief supporting it.

THE COURT: I happen to have done some work on

authorized personnel or persons before the grand jury, so I know what I will do with that motion just on the statement that the Government must tell you what happened before the grand jury.

MR. PUCCIO: Iwould point out that we have already made available the grand jury minutes.

THE COURT: That is not what he wants. He wants you to prove that only the assistant was there at the time the evidence was submitted, that a reporter was there, that no one else that wasn't authorized was there and no one poked his head in the grand jury proceedings at that time, when there was voting that nobody was there and that means that you have to bring in the grand jurors.

How do you know who was there when you weren't there yourself?

MR. PUCCIO: When I left the grand jury room --

THE COURT: Oh, were you there?

MR. PUCCIO: Yes.

THE COURT: I might take some statements from you to dispose of that.

We are not going to encourage these types of motions, six days beforethe trial.

MR. PUCCIO: I ask that these slides be

marked after removed -- after they are removed from the camera.

THE COURT: All right.

MR. PUCCIO: I would ask Mr. Lavallee to identify the scenes, and objects depicted in the photographs, that we are going to show.

Can we turn the lights down?

THE COURT: Yes.

All right, Mr. Puccio, you may proceed.

Mr. Puccio has asked you to identify --

DIRECT EXAMINATION

BY MR. PUCCIO:

Q Will you identify the first slide for us, Mr. Lavallee?

A Slide No. 1 has been taken at 839 Taschereau Boulevard, the corner of Riverdale and Lafayette.

Q Are you familiar with this particular location?

A Yes.

Q Can you tell us what is at this location?

What was at that location in late 1970 and early 1971?

A On the second floor was the Victoria Sporting Club that operates on the second floor.

MR. PUCCIO: Can we have the next slide, please.

THE WITNESS: That small extension door, this was the door that they used to go up to the Victoria Sporting Club.

Q Is the second slide also an accurate representation of the Victoria Sporting Club?

A Yes sir, from the outside.

Q Now, the third slide.

A The third slide is the corner of Center and Lafayette, which is written on the poster there and this is where we had our telephone connection -- I am sorry, that is the St. Laurent and Lafayette.

Q Is that the telephone pole?

A Not that one, but the next slide, Slide No. 4.

Q May we have the next slide?

A We had our connection up on this pole here connected to our observation post.

Q And for which Vegas project was this telephone pole used?

A For the 1-B and the PT connection.

MR. IANNUZZI: May we know whether or not the witness was the photographer of these photographs?

THE COURT: Only if Mr. Puccio wants to bring

it out, but I don't see the relevancy and I am not going to ask him to do it.

MR. PUCCIO: For the record, Mr. Lavallee was not the photographer, but the photographer will be the next witness or the next witness after this.

THE COURT: The next question is going to be when were these pictures taken.

It is not material. It wasn't when the trees were in bloom, I can see.

Q May we have the next slide.

A This slide, this is No. 5, is showing another angle of that same terminal pole, same corner.

Q The next slide.

A Slide No. 6: We are on the corner of Cote St. Luc and Clanranald, and this is where Mr. Dasti's residence was located.

This is the whole building of the residence and the main door, the main entrance, I should say.

Q The next one.

A This is a closer look at the main door. That is slide No. 8.

Q The next one.

A Goign down into the garage we are showing here the terminal box.

Q Now --

THE COURT: That looks like you in the picture. Is it?

THE WITNESS: That is me, yes sir.

Q Mr. Lavallee, is that where the interception was made on Mr. Dasti's telephone?

A Yes sir. My right hand is showing the underground pair and my left hand is showing the apartment pair, terminal pair.

Q What is the underground pair?

A It is a regular way of calling, the pair of wires that come from the central office of the Bell Telephone, UG.

Q The next one?

A Slide No. 10, corner of Chauvin and Mignault, Montreal, another point of interest for us.

Q The next one?

A This is the residence of Mr. Frank Cotroni and this is where we, the next slide, is a close-up of the same residence.

At the end there of the alley is the corner of Mignault and Rosemont.

This is where we put up our equipment for wiretapping on that pole and we see it right behind that

building.

We will show you a close-up on the next slide.

That is it.

Q Which number is this?

A This is number 15.

Now, Slide 16 we are moving to the corner of St. Dominique and Ste. Catherine.

The next one is Slide 17 and this is Pierre's Barber Shop. We had another point of interest there.

A close-up of Slide 18, a close-up of Pierre's Barber Shop is shown.

Q As you testified, one of the Vegas projects was installed in Pierre's Barber Shop?

A Yes.

Q In fact the two wiretaps were installed in Pierre's Barber Shop?

A Yes, on Slide 19 it shows a new telephone apparatus but on the same corner there was the old apparatus, a pay telephone that we had wiretapped plus the business line of this Pierre Barber Shop location.

Q Now, is that where the phone was located in 1970 and 1971?

A Yes sir.

Now, Slide No. 20 is, I am showing the terminal

inside of the building and that is where the two lines appeared on the terminal.

Q Is that where, does this slide depict where the interception was made?

A Yes sir, the actual interception.

Q The two telephones at the Pierre Barber Shop?

A Yes.

Q You are indicating a point in the slide, is that correct?

A Yes sir.

Q The next one?

A The next is Slide 21, another point of interest on the corner of Fabre Street in Montreal.

We are showing here the residence on Slide 22, the residence of Mendolia.

Q That was also a Vegas project concerning Mendolia's residence; is that correct?

A Yes, a close-up of Mendolia's residence is Slide 23.

Slide 24 we are showing the terminal that we used up the pole to put up our wiretapping apparatus.

A close-up of that same terminal is the next one.

At the corner of Bordeaux and Jean-Talon, is

another point of interest.

Slide 26, that is another project in the Vegas.

This is showing the side door of Guido Orsini's residence.

A close-up of Slide 28 of this same door.

Now, moving to the back of the building, Slide 29, we are showing the terminal points, general view of the terminal location, up the pole.

A closer look at the same pole, Slide 30.

Now, Slide 37, is the south view of the Laurentian Hotel.

MR. IANNUZZI: Is that Slide 37?

MR. PUCCIO: Yes. We skipped to 37. There were other slides taken that are not relevant to this proceeding.

MR. IANNUZZI: All right.

THE WITNESS: Now, the parking lot of the same hotel, Slide 38, the entrance to the parking lot and now the parking lot itself, Slide 39.

Slide 40 is showing the entrance of the lobby like it is written.

Slide 41 is the general view of the lobby of the hotel and we see at the back, the far end, the two doors of the entrance, sir.

Now we are showing the location of these three telephones, the pay telephones that existed at that time but not the same apparatus. It has been changed since that time.

Slide 42.

Now, Slide 43 is showing Room 301, the equipment room for the Laurentian Hotel.

44 is the same door opened, showing the back of the room and that will take us up to the equipment room itself.

Slide 45 is a general view of the terminal strip inside the equipment room.

Q Now, is this where you made the interception at the Laurentian Hotel?

A Yes sir.

Q Next?

A 46 is a closer look at the same strip.

Q The next one?

A 47 is a better showing of what I have explained before on the blackboard about the processing of wiretapping.

(Continued next page.)

Q Would you approach the slide and indicate for us what is depicted?

A This is a target that we just took a picture of to show some explanation.

This is the apparatus which would exist in the house, that is connected to the terminal pole and this is a regular installation by the telephone company.

The other regular installation would be at the observation post up to the pole.

This would be connected to the pole by the telephone company and later on disconnected by us like shown here. We are only going to use our little old lady up this pole and we are going to follow that same line from the Bell central office to our outside line to the Quebec police headquarters and finally the connections on the tape recording machine with an acoustimat. It is a voice-operated relay.

Q And the target now, and the observation post is in this slide, and they are not involved in this case but just an example used for the purpose of clarifying it?

A Yes.

Q The next one.

A Let me see, now, that is No. 48. That is showing a closer look of the terminal, any terminal available by the telephone company. It is showing twenty-six pairs of cable

or lead terminals.

This is a 49A terminal up the cable here and a regular lead splice, that had nothing to do with the terminal whatsoever here. The rest of the wires are drop wires that go to the premises of the people.

Now, slide 49 is showing a 49A terminal and this is the cable that goes through from one pole to another, and all we have to do is connect these terminal plugs onto these wires as the Bell employees did.

We would do the same for wiretapping, using these terminal plugs.

Q The next one?

A Slide 50 is showing the little old lady, our first model of the little old lady.

Q Is that the model of the little old lady, is that model used in this case for the Vegas projects?

A Some of the Vega projects.

We used that apparatus.

Q The next one.

A This is the modified model, and it was this one here, this is slide 51.

Q Was that used at all in the Vega projects?

A Yes.

Q Next, sir.

A The next one, this is a regular central office, Bell central office for your information.

Slide 53 is the inside office of the central office equipment. It is similar to what I am showing here, but I have just discussed it before, and these step-by-step selective switches that could be checked by the central office employee at night are here.

I have discussed this before. This step-by-step selective switch could be checked by the central office employee at night. Whenever you hold on too long and we were cut off by that same employee if you did.

Q You are depicted in that slide?

A Yes. These are the similar switches.

Q Next one.

A Slide 54 is the Roberts tape recorder that we used in the Vega project, particularly at the Victoria Sporting Club.

This is the machine we use.

Q This was used for the Victoria Sporting Club project?

A Yes, plus this starter.

Q Also depicted is the automatic starter?

A Yes, sir.

Q The next one?

A Slide 55 is showing a similar model as the Uher that

we used in all the other projects and a view of this akustomat reading that is voice operated relay that started the machine.

Q The Roberts was used on the Victoria Sporting Club and the Uher was used in the other Vegas project?

A Yes.

Slide 55 is showing the door of our office at the time.

Slide 57 is showing the inside of our office.

Q Is that where the Vegas tapes were kept?

A Yes, sir.

MR. PUCCIO: I have no other questions.

THE COURT: All right, Mr. Iannuzzi, you may inquire.

MR. PUCCIO: Your Honor, could we mark this after we are through?

I would offer these slides into evidence for the hearing.

THE COURT: Any objection?

MR. IANNUZZI: I don't have any objection if we can know when the date that these were taken or the photographer will testify to that, I guess.

THE COURT: I don't know what the relevancy is.

If he were an artist and were able to draw a picture right now of what he was talking about, I would

admit it into evidence. It is illustrative evidence.

The time it was taken is to me totally irrelevant.

Who took it is totally irrelevant. Lawyers always like to ask those questions.

MR. PUCCIO: They were taken since our last appearance here in court.

THE COURT: All right.

THE CLERK: 51 slide marked Government's Exhibit 8 in evidence.

THE COURT: I don't know how each frame can be separately marked, but you have an index there.

MR. PUCCIO: May I have this marked for identification? This is an index of the slides.

THE COURT: All right, the slides are in evidence. The index is marked for identification.

THE CLERK: So marked as Government's Exhibit 8A.

MR. PUCCIO: I would just point out that --

THE CLERK: That is for identification.

MR. PUCCIO: -- (continuing) slides 31 to 36 were not shown.

MR. KARL: May I ask that defense counsel be furnished a copy of the index that was just marked?

MR. PUCCIO: I will have copies made and furnish them to counsel.

MR. IANNUZZI: When Mr. Puccio indicates 31 to 36 were not shown, they are not offered, either?

THE COURT: Of course not.

MR. PUCCIO: They are not in the machine, your Honor. We will have a private showing of those.

THE COURT: I have seen more interesting scenes of Canada than that, but maybe 31 to 36 are pretty.

Except for the type of machine that was raised and I don't know how that is relevant, I do not see, except for illustration, how anything else is relevant in addition to the root that the telephone lines took. It illustrates the witness' testimony and for no other reason.

MR. PUCCIO: I thought it might save some time.

THE COURT: That picture of the Bell telephone building was quite interesting. I have seen about a hundred of them in every place I have gone.

MR. IANNUZZI: By way of communication with Mr. Puccio, I believe a copy of which was furnished to the Court, I requested the production of a little old lady, seeing that there are two, one is a modified version, and I would ask at this time if the Government would provide the same so that we might have an expert inspect this.

MR. PUCCIO: We have two little old ladies that were in use, the old version and the new version.

They are dummies and they do not contain the coil and apparatus that is normally inside the little old lady. We can produce them right now for inspection.

(continued next page)

CROSS-EXAMINATION

BY MR. IANNUZZI:

THE COURT: Mr. Iannuzzi wants to give them to his expert.

MR. IANNUZZI: Yes, sir.

MR. PUCCIO: We don't have one available.

THE COURT: What can the expert say, that they won't conduct sounds?

MR. IANNUZZI: Yes, sir.

THE COURT: They heard it.

MR. IANNUZZI: It is the contention of the defendants that the system used by the prosecution, or at least allegedly used by the prosecution, may in effect not be the actual method; that there is no question but that there are some recordings, but the fact that they were recorded in this method or in some other method is in question, and I suggest that it may be if the telephonic communication equipment is effective or not capable of relaying the information that the prosecution claims, that may be of great significance.

THE COURT: Mr. Puccio can accede and respond to as many requests as you make.

I have not yet said it is totally material. All I know is that if someone speaks and someone else hears it,

and that someone testifies andsays, "That's the voice of that man," I don't care how it got there.

If I had to prove that every telephone conversation went through certain mechanisms and had to produce the wire through which it went, we would never have a trial. That is not the reason that it is irrelevant. It is irrelevant only because, as my ear hears your voice, and I can say, "That's Mr. Iannuzzi," so anyone who comes to this stand and testifies and says, "Yes, I heard Mr. Cotroni's voice. I know it's his voice and this is what he said." To me that is enough.

When you are talking about distortions, when you are talking about the failures, that is something else. We haven't come to that yet.

MR. IANNUZZI: May I suggest, however, that toward the end of determining if in fact this method is even operable, and I have engineers standing by at this moment to look at this equipment and any other equipment that will be made available, I think defense counsel should have the opportunity of having experts look at the equipment to determine its capacity to perform, the distortion effect, the interference effect, the diminution of service of Bell Telephone, which would be a violation of Canadian law, etc., etc.

THE COURT: I can't think in those complex problems. I think very simply.

If you say something to me, I can testify that that is what you said, and I don't face these complex electronic, electrical and sound problems until I know that a word was said and that it's significant, and that the challenge is due to a distortion, and I think if that happens then you should bring your experts in to prove that it was a distortion.

Apparently, Mr. Iannuzzi, from what I see from the present challenges, and I am going to the rules to see whether it is timely, and if it is not timely I am going to say "not timely," I won't even reach that argument -- but you are under the impression that the Government must prove everything that ever happened in this case, whether it is offered, whether it is not offered, and on what is offered you must prove it -- the Government must show absolute precision in what it offers.

This is a new way of trying a case. I don't know why this Cotroni case should be any different than the hundreds and hundreds of cases I have tried.

A simple thing like hearing someone on a recording--

MR. IANNUZZI: Yes, sir. May I --

MR. PUCCIO: For the record, I can make this

representation, your Honor. It might resolve certain matters. At the trial, provided your Honor allows us to offer the tapes into evidence, we will have witnesses who will identify the voices, not only law-enforcement people, but people actually involved in this narcotics transaction.

THE COURT: It is almost like asking for a doctor to come in to prove the construction of the ear to make sure that that's the voice he heard.

MR. IANNUZZI: If your Honor please --

THE COURT: It is only mechanical devices that you want, but it is almost as silly as that.

MR. PUCCIO: I should also say that we don't -- we cannot produce now the actual machines that were used for every one of these nine Vegas projects, nor can we produce, as I understand it, the actual "little old ladies" that were used; we can only show examples of the types of equipment that were used, if necessary.

THE COURT: Mind you, I have not heard any charge, and I assume Mr. Iannuzzi has heard all the tapes --

MR. PUCCIO: Yes, he has.

THE COURT: Any charge that any material part of the conversation to be offered is questioned because it wasn't correctly or accurately recorded.

Why should we even be talking about this?

MR. IANNUZZI: May I suggest in this case the recordings are of the essence, if your Honor please, because as Mr. Puccio has indicated the last time we were in court, that in the event that your Honor would decide against Mr. Puccio concerning the tapes, that he would not even proceed to trial but would appeal your decision; they are that essential.

THE COURT: He did not say he wouldn't proceed to trial. He wanted the opportunity to appeal.

MR. IANNUZZI: Yes, before trial.

MR. PUCCIO: Or at least to consider an appeal.

THE COURT: He didn't say that even if the appellate court affirmed my suppression that he wouldn't proceed.

MR. IANNUZZI: I just meant in time sequence, that he would prefer to appeal these tapes because they are that essential a piece of evidence.

In addition to which, when your Honor says if you hear me then that seems to be kind of a simple problem. The fact of the matter is that no one, no one heard the voices of the people speaking on the telephones, that it was totally mechanical, and the recording was made totally mechanical and there is no one who can say or

testify that he heard that. Therefore, the mechanical aspect of it becomes significant.

THE COURT: See, I think very simply, again I say that, let's assume someone found a letter containing admissions, and it was identified as Mr. Cotroni's handwriting. First, there is no question that that would be introducible in evidence even though they never heard Mr. Cotroni say it and there was no mechanical equipment to prove that the penmanship and the pen was in perfect working order -- that is one phase.

So the original tapes, in my opinion, if they can be identified as the voice of Mr. Cotroni, that's it and I don't care what mechanism produced it.

Second question: What happens to that evidence when the tapes were destroyed and summaries were made? It is not now Mr. Cotroni's voice but somebody else's? That person who made the summary, the dummy tapes, they call them --

MR. IANNUZZI: They are dubs, sir.

MR. PUCCIO: They are two different things.

THE COURT: All right. That person who heard the voice and knows that to be Mr. Cotroni can testify that he heard it, as though it were Mr. Cotroni speaking; it is as simple as that.

MR. IANNUZZI: But then the mechanical aspect of it becomes significant, if your Honor please, because no one is listening to Mr. Cotroni, it is someone hearing a mechanically created sound afterwards who must testify that if this was properly mechanically made this sounds like Cotroni.

The question is, was it properly mechanically made, because the person who is testifying is not testifying, "I heard Cotroni speak. I heard a tape recording of the mechanism that was in operation." And he must assume that the operation was proper.

If it was not proper, if there was a malfunction, then it would not be that he was listening even to Cotroni's voice but maybe another voice in distortion --

THE COURT: Mr. Iannuzzi, you make the record. You know pretty well how I am going to rule on this.

MR. IANNUZZI: No, I don't, sir.

THE COURT: I disagree with that concept entirely. I don't care how the mechanism worked, any more than I would care if you called me on the telephone and I would ask for proof as to how the voice traveled and ask for a physicist to come in and prove that the voice was converted to molecular impulses, traveled along the wires and was converted to sound.

MR. IANNUZZI: You would be concerned if someone called you on the phone and said it was not you, but merely a distortion of the mechanism and the person said it was you --

THE COURT: If he said it was a distorted mechanism--

MR. IANNUZZI: If he is testifying on the basis of proper mechanical operation.

Suppose it is not proper mechanical operation, he's not listening to a human voice.

THE COURT: He is not testifying on the basis of proper mechanical mechanisms because he doesn't even know how the mechanism worked. He identifies the voice.

MR. IANNUZZI: He identifies the voice that was mechanically produced on the machine, but he never heard the voice by way of on the telephone --

THE COURT: It is only one other step. It is all mechanical.

MR. IANNUZZI: That's why I want to inspect the mechanism, sir. That's why they are significant.

THE COURT: I get your point.

Cross-examine, please.

MR. IANNUZZI: May I also suggest, if your Honor please --

THE COURT: Suppose this mechanism were put on a

recorder in the telephone company and then it came through your telephone line and you heard it, would it be any different than all the other contraptions that a voice goes through? Isn't it just one more?

MR. IANNUZZI: Well, in the first instance, where you have an actual person listening to an ordinary telephone and the ordinary telephone working in the fashion that it has for decades, and with the experience that a person has in listening to a voice of a person over a telephone, then we might be able to conclude with a reasonable degree of certainty that, yes, this person was listening to Judge Mishler or Frank Cotroni, but when we have a person who is listening not to a telephone conversation at the moment that it is being made, but, rather, is listening to a tape recording via mechanisms and he is listening to it at some time later, he is identifying sounds on the tape.

But if there was --

THE COURT: Can you imagine how unreliable everything you see on television is that comes through the satellite -- can you imagine it going all the way up there and then coming on to your television set? It is impossible, don't believe a thing you see that comes through satellite, Mr. Iannuzzi.

MR. IANNUZZI: I think, if your Honor please, that it may very well be that if a satellite works it has proper function. But in order to determine if we are getting the proper signals here, I suggest -- I urge on the Court the following argument: that the person who is listening to the tape is merely listening to electronically reproduced sound which --

THE COURT: Merely listening to it, merely?

MR. IANNUZZI: Yes. He did not hear a human voice speaking. He hears the mechanical reproduction and I suggest to your Honor that if -- for instance, when you have a 76 record played at 3? or a 33 record played at 76 it can sound completely different.

We don't know that these mechanisms were proper and when he heard what he heard the question is --

THE COURT: You will recognize the voice that is off speed; even I can do it.

MR. IANNUZZI: Yes. But the intonation and the nasality of the tone is different. After all, what is it that distinguishes your voice from mine or mine from Mr. Puccio or Mr. Puccio from Mr. Cotroni? It is certain very slight distinctions. What is it that makes you recognize --

THE COURT: Absolutely correct. But it has nothing

to do with admissibility of evidence.

MR. IANNUZZI: I understand. But how do we know how it was produced ?

THE COURT: It is very distressing but unimportant for my purposes.

MR. IANNUZZI: I suggest that it is significant, if your Honor pleases.

THE COURT: You will argue that up on appeal. You make a complete record. I will sit here and listen to it.

MR. IANNUZZI: May I urge also to the Court that it is significant in the way in which the tape recordings were made because the defense will urge in this case that Title 3 is applicable to these tape recordings and as such it will become extremely significant if Title 3 is applicable as to the way the, the manner and means and by which these were recorded.

If your Honor pleases, I would give you further substantiation of our contention --

MR. PUCCIO: Your Honor, I would --

THE COURT: On those problems, the admissibility of a wiretap law, the admissibility of wiretaps that don't comply with our law, I may very well write on that and so you may have the reason for my rejecting

that argument in the opinion. I want to think that out before I speak.

MR. IANNUZZI: May I offer the contention to the Court for your edification so you may have it available when you write?

THE COURT: Surely. This trial is going to start January 6th.

MR. IANNUZZI: I don't mean to delay the trial, nor does Mr. Puccio, and I think that you can understand from the volume of work that we have been doing that is evidenced by the exhibits, the motions, the memoranda, that both of us have been working assiduously in this matter.

If in fact it comes down to the point in the interest of justice that the matter should go over, that will be a matter for your Honor's discretion. I do not want to delay this trial. My client is in jail.

THE COURT: In the interest of justice this trial will start January 6th. That's the interest of justice.

MR. IANNUZZI: I suggest that hopefully all of the proceedings that are preliminary, that is to say, this hearing and all of the other proceedings -- for instance, if your Honor please --

THE COURT: Start the cross-examination. This

proceeding will never be over if I listen to all the arguments now and later. I will listen to them later.

Let's get through with the evidentiary part of the case. You may have to work Saturday, Monday and Tuesday, but this case will start on January 6th.

MR. IANNUZZI: Will your Honor give me an opportunity to be heard in reference to these --

THE COURT: Ultimately. If I don't have time to hear you I will ask you to write it. We are not taking time from this hearing.

MR. IANNUZZI: May I suggest that in reference to this case I would like to, first, indicate that there are tapes that have been now made available by way of letter that I received yesterday from Mr. Puccio. I wrote on --

(continued next page)

THE COURT: I heard all about it. I hear there are hundreds of them and that they have offered them to me for listening and for reading, right?

MR. IANNUZZI: To determine the relevance in this case.

THE COURT: That's right. That will all be done before January 6th.

MR. IANNUZZI: May I also suggest that they have offered them for an expert of mine to go to Canada and listen to it.

THE COURT: They can do it before January 6th.

MR. IANNUZZI: I am going to attempt to do all of these things. I am suggesting that there is a great deal of work involved.

THE COURT: I suggest you get on with the cross-examination.

MR. IANNUZZI: May I just suggest as I indicated that I would like to give to your Honor for his edification our contention in reference to Title 3.

May I just suggest that all of these communications in this case, with the exception of a relative few, were over the United States telecommunication network, and as the courts have held, Title 3 relates to all communications that go over our nation's telecommunication

network.

THE COURT: I understand all that.

Mr. Iannuzzi, if you don't start your cross-examination I will assume you have none and I will excuse the witness.

MR. IANNUZZI: I have extensive cross-examination, sir. I am just trying to put it on the record. You said I could.

THE COURT: At a later date. Get through with the examination.

MR. IANNUZZI: Very well. In any event, Iwould call for the little old lady so that we can have someone examine it, if your Honor please.

Mr. Puccio says he has --

THE COURT: I will give you thirty seconds to start your cross-examination.

MR. IANNUZZI: Mr. Puccio said he would give them to me, but he is giving me dummies without insides and I am asking your Honor to allow me to have them.

I see you looking at your watch.

THE COURT: I will give you thirty seconds to start your cross-examination.

MR. IANNUZZI: I am going to start the cross-examination, but I wish to put on the record that I

would like to have these.

Are you foreclosing me from having them, sir?

CROSS-EXAMINATION

BY MR. IANNUZZI:

Q Mr. La Valle, do you have a copy of the "little old lady" that was used in the installations of Vegas?

A We have something that looks similar to our original one, yes, sir.

Q Do you have not only something that looks similar to it, do you have one that is in fact a -- not the same one, perhaps, but one that has the same mechanisms, etc., contained therein?

A No, sir.

Q Do you have a copy of the modified "little old lady" that you used?

A A dummy copy, yes.

Q When you say a dummy, in other words, it is just the outer casing without any insides?

A Yes, sir.

Q Do you have one which has the insides connected thereto?

A No, sir.

Q Do they still have such available at the police force in Montreal?

A I'll have to inquire. If they want to inform me, yes, I have to inquire.

MR. IANNUZZI: If your Honor please, I would like to call for the production of operable similar "little old ladies," as they are referred to, induction coils.

THE COURT: Mr. Puccio?

MR. PUCCIO: I think we have presented sufficient evidence at this point, if it is in fact relevant, to indicate how this "little old lady" operated.

We have slides, we have had testimony, we have two mock-ups in court which I would gladly have marked for identification, and I would object to the production of any more "little old ladies" or --

THE COURT: Objection sustained. It is denied. You have an exception.

MR. IANNUZZI: Thank you very much, sir.

THE COURT: That is point No. 32 on appeal.

BY MR. IANNUZZI:

Q What was contained in these little old ladies, Mr. La Valle?

A Some electronic apparatus like transistor and diode and induction coils, miniaturized.

Q Anything else?

A Well, the resin to get the whole thing together

and protect it against moixture.

Q Were both "little old ladies" exactly the same except for size?

A We used a smaller component in the smaller one.

Q But they were the same components?

A Similar ones. Similar in value, I should say.

Q Now, was Adrienne Robert, was he the Director General of the Quebec Provincial Police in 1965 through the period that you were there?

A At one point or another, yes.

Q And is it not a fact that Mr. Robert was then Director General and gave orders to all personnel to discontinue wiretapping?

A That's what he have mentioned to my ex-boss, Lt. Minard, at the time.

Q The Director General of the Quebec Police Force directed your superior, and therefore you indirectly, to discontinue all wiretapping on behalf of the Montreal Police Force?

A Not the Montreal Police Force.

Q The Quebec Provincial Police.

A Yes. This is what has been repeated by ex-Lt. Minard to us in our squad. I don't know if it's the right sentence and words that came from our director.

Q In any event, whether it came directly from the Director General, Adrienne Robert, or whether it came from your immediate superior, Mr. Minard --

A Yes, sir.

Q Mr. Minard or Lt. Minard did indicate to you that the Quebec Provincial Police was to discontinue all wire-tapping activities; is that correct?

MR. PUCCIO: Your Honor, could we set a time on this, please?

THE COURT: You can bring it out on redirect.

Q Is that correct, sir?

A This has been said by Mr. Minard, yes.

Q He said that to you?

A Yes.

Q In other words, you were present when he said that to you and other people in your squad?

A Yes, sir.

Q And despite the fact that he indicated that -- withdrawn.

Was this before the taps in this case?

A Yes, sir.

Q And despite the fact that he made this direction to you, was it in an official capacity that he made it?

A Well, what does that mean?

Q Did it make it as a Lieutenant from the police force or was he sitting around the bar and you were just chatting?

A I wouldn't know the difference. He mentioned it. I don't know in what --

Q Did he mention it in connection with your official duties?

A I couldn't answer on that.

Q Did he, in any event, say to you and other members of your same squad, "Discontinue wiretapping activities"?

A Not in that sense. He mentioned that Mr. Robert had mentioned it to him.

Q Did he mention it to you for the purpose that you would know it?

A Yes.

Q All right. And is it a fact that he also said that the reason that this was said and was being said was because the operation was too dangerous in view of the illegality?

A I don't know. I wouldn't know if it was in danger of the illegality. It was too risky. He mentioned that at one time.

Q It was too risky?

A Risky.

Q Did he say what that risk was?

A I don't know.

Q Did he mention the risk in connection with illegality as part of the risk?

A I don't know.

Q Is it a fact, however, that thereafter your squad decided to disregard Mr. Minard and possibly Mr. Robert's direction and continued to wiretap?

A We had good intention for the justice in our province to keep on continuing it, yes, sir.

Q Yes. So that it was your determination that despite the fact that perhaps the Director General gave a direction, despite the fact that your immediate superior, the lieutenant, gave the direction, that you would disregard it because you considered it more important to do what you were doing?

A Yes, sir.

Q No one gave you an order to continue, did they?

A No, sir.

Q And after the order to discontinue was given, you did it anyway?

A Yes, sir.

Q So therefore what you did was not within the official directive of the General, the Director General or the

lieutenant in your police force?

A This is your conclusion. I can't come to that conclusion.

Q Did they direct you to do otherwise?

A Well, there were other superiors between Robert and Mr. Minard.

Q Were you directed to do otherwise than wiretap?

A I don't -- with everything that's been said and mentioned and pronounced in words and phrases, I don't remember. This is in 1964, '65. The exact answer for that particular question is very difficult.

Q Were you specifically directed by your superior to discontinue wiretapping?

A Well, we have to consider what the specification means in that case.

Q Did he say that to you?

A To who?

Q To you and your squad.

A Who?

Q The Lt. Minard.

(continued next page)

CROSS-EXAMINATION

BY MR. IANNUZZI: (Cont'd.)

THE COURT: Sustained as to form. Did Lt. Menard tell you to stop wiretapping?

A He mentioned that Mr. Robert want us to stop wiretapping at that time. I don't recall that he mentioned we were -- we don't make any wiretapping from now on. He said Mr. Robert had mentioned that he don't want us to --

THE COURT: So you didn't understand that as an order to stop wiretapping?

THE WITNESS: Yes, sir.

Q In any event, you didn't obey that.

MR. PUCCIO: I object to that.

THE COURT: He said it wasn't an order, Mr. Iannuzzi.

Objection sustained.

Q Now, in reference to the connection that you made -- by the way, is it your testimony that you installed all of these wiretaps?

A The 11?

Q Yes.

A Yes.

Q In Vegas 1-B and PT, basically they were done in the same fashion, correct?

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A Yes, sir.

Q And in connection therewith, you didn't use the "little old lady," did you?

A To start the operation, no. At the start, no.

Q And as a matter of fact, the manner in which it was connected was a direct connection to the terminals of the dictaphone, for instance, Section 779272 in case of Vegas 1-B and 6770378 in the case of Vegas PT?

A Yes, sir.

Q In other words, it was a direct connection to the terminal?

A Yes, sir.

Q And then you took a drop wire and connected that directly through some mechanical apparatus to a recording box, is that correct?

A Yes, sir.

Q And therefore, you didn't use an induction coil in that case but a direct connection?

A Direct connection to our relay.

Q To the terminals. A direct connection from the terminals to your relay, which was used with a machine, is that correct?

A Yes, sir.

Q And in the case -- by the way, where was it -- to where -- withdrawn. In that case, also, you didn't lease or rent a telephone number from the Bell Telephone Company in order to make the connections that you did on the other phones?

A Compared with the other operations, no.

Q There was no extra phone, this was connected direct and it was a top right onto that wire, correct?

A Yes, sir.

Q Now, in reference to Vegas 3, there seemed to be two taps in reference to Vegas 3, one in the Hotel Laurentian, or the Laurentian Hotel --

MR. IANNUZZI: May we, if your Honor please, distinguish that from the other Vegas 3 by perhaps putting 3-A in connection with one of them, one in the hotel and one in Mr. Dasti's home? I think just calling them both Vegas A-3 would be a little confusing so perhaps we can differentiate a little further.

THE COURT: Just so long as the witness understands what you are saying.

MR. IANNUZZI: Mr. Puccio?

MR. PUCCIO: I have no objection.

Q In reference to Vegas 3 -- may I call it 3-A,

you understand that it is the Laurentian Hotel?

A Yes, sir.

Q In connection with the Vegas 3-A, the Laurentian Hotel, that also was not by way of a rented telephone and an induction coil, correct?

A Yes, sir.

Q In other words, that too was a direct connection to the terminals or the wires and then made directly to your recording equipment?

A Yes, sir.

Q Is that correct?

A Yes, sir.

Q All right. Now, in connection with the Vegas PT, that was to a phone, a public telephone, is that correct?

A Yes, sir.

Q And when you were up on the pole the Vegas PT didn't have what you referred to as two ends in the terminal box, did it?

A I don't recall that precise what was available?

Q Let me ask you this question --

MR. PUCCIO: Your Honor, I am going to object. This was all covered at our last appearance, the connections that were made for all these Vegas projects, and I would only ask for an offer of proof --

THE COURT: Mr. Iannuzzi, I had that experience with you once before, after the first witness got through with Mr. Polakoff, you came in and wasted an awful lot of time going over the same material.

MR. IANNUZZI: I realize that the witness testified in some fashion to these items; however, I would suggest, when we have run together, for instance, three, five, seven, eight, nine, eleven, twelve --

THE COURT: Mr. Iannuzzi, please continue the examination. I find that you spend more time explaining why the question is correct than if I permitted you to ask the question and get the answer out.

MR. IANNUZZI: Very well.

THE COURT: I am interested in starting this trial on January 6th, Mr. Iannuzzi.

MR. IANNUZZI: I am, too, if that is possible, sir.

THE COURT: Yes, it certainly is.

BY MR. IANNUZZI

Q Mr. Lavallee, isn't it a fact that public telephones don't have terminals in the way that private phones have, that thery are direct wires from the central office?

A You mean to say that it couldn't be possible an extension phone from that pay telephone?

A I suggest that you answer my question rather than my answering yours.

A I don't understand it, sir.

Q All right. Isn't it a fact that public telephones, because they are public telephones, have different connections than a private phone which has terminals in a terminal box?

A No, they are not different.

Q And it's your testimony that they are hooked up the same way?

A Yes, sir.

Q Very well. And is it your testimony therefore, that you hooked up Vegas 1-B and PT in exactly the same way?

A Yes, similar.

Q Now, in reference to Vegas 3-A -- withdrawn. In reference to Vegas 3, you testified that this was connected by way -- withdrawn. The observation post that was used, in reference to Vegas 1-B and PT, is it your testimony that the Police Department rented a room somewhere and kept the machinery there?

A Yes, sir.

Q And do you know the address of the place at which this was kept?

A I don't remember.

MR. PUCCIO: I would object to that. I would object for the grounds stated at our last appearance --

THE COURT: Objection sustained.

Q Was this place rented from, including all of the time from July 7, 1970 to March 25, 1971?

A I don't remember that precisely, no. I have to check with someone, some of the police officers.

Q Would it be your testimony that they were paying rent on this for the -- for the nine months in question?

MR. PUCCIO: I object. That was asked and answered already.

THE COURT: My recollection was that Mr. Iannuzzi finally conceded that wasn't important to know where, what rent was paid and so forth the last time when it was learned that this was not just a boarding house but a separate room off the the public hall.

Have you changed your mind since, Mr. Iannuzzi?

MR. IANNUZZI: Well, in connection with all of this, after realizing the testimony -- for instance,

the involvement of the rental --

THE COURT: Objection sustained.

MR. IANNUZZI: May I just indicate for the record what I'm after, if your Honor please?

THE COURT: Surely, go ahead, Mr. Iannuzzi.

MR. IANNUZZI: I am suggesting, if your Honor please, that if the Police Department were doing what they said they were doing by renting all of these premises, et cetera, that the cost must have been a significant factor in their budget, for instance, to rent an apartment from the 20th of October, 1970 to the 1st of January, 1973 in an area similar to that of Mr. Dasti and Vegas 3 would be an exceedingly expensive and therefore it must have a record, if in fact the system that Mr. Lavallee is testifying to was used. This is one of the reasons why I am suggesting that this method may not have been used and it is significant as to getting to the actual fact and the actual method of recordation in this case, if in fact there was recordation, your Honor.

I suggest that all of these factors become significant. If they rented a place, because it's testified to, and if they paid rent for that period of time, if they rented all these phones for this

period of time and had all of these projects going at the same time, this was a very significant budget, and I suggest there must be records in the Police Department concerning the same and I would call for their production.

THE COURT: I am now more convinced than ever.

Objection sustained.

MR. IANNUZZI: Very well, sir.

BY MR. IANNUZZI:

Q Mr. Lavellee, in reference to the phone at Vegas 3, the connection on Vegas 3, this, you say was connected with the "little old lady," correct?

A Yes, sir.

Q And is it your testimony that you connected it yourself?

A Yes, sir.

Q And in connecting it, isn't it a fact that the terminal box -- withdrawn. Did you put the "little old lady" inside the terminal box?

A No, sir.

Q Where was it put?

A It was put outside the terminal box.

Q In other words, in the immediate vicinity of

that terminal box?

A Yes, sir.

Q Is it not a fact that terminal boxes serviced only the apartments in the address 4635 Clanranald?

A Yes, sir.

Q And when you indicated that you rented a telephone, do you know what the telephone number was that you rented?

A I don't remember now.

Q Would it be in the same exchange as 488?

A Most probably, yes.

Q And did you also rent an apartment in that building?

A Yes, sir.

Q And do you know what number the apartment was?

A I don't remember, sir.

Q There is no question but it was in that apartment building?

A Oh, yes.

Q And do you know, was it an apartment that belonged to someone else and you were just using it?

MR. PUCCIO: I object, your Honor.

MR. IANNUZZI: May I finish the question, sir?

MR. PUCCIO: I object to the location of these apartments that were rented.

THE COURT: Finish the question, Mr. Iannuzzi.

Q Do you know whether it was someone's apartment that you used just a portion of the facility or was it an apartment that the building rented exclusively?

MR. PUCCIO: I object.

THE COURT: I will allow that. I think it's already been testified to once. Say it again.

Do you understand the question?

THE WITNESS: We used the two types of ways of making it.

Q Very well. In reference to 4635 --

THE COURT: Didn't you testify that you had a key to the particular apartment that you rented -- No one else had a key to that apartment?

THE WITNESS: I mentioned, sir, that we rent apartment houses in most of the cases. Other places that we couldn't find apartment houses, I didn't mention that, I remember now, we have talked to people to have additional line installed in their apartment.

(Continued on next page.)

B fls.

Q Now, in reference --

MR. IANNUZZI: I am sorry. May I proceed, sir?

THE COURT: Surely.

Q In reference to 4635 Coronal, did you have an apartment in that building?

MR. PUCCIO: I object. Your Honor, I object to the disclosure of the location of these apartments that were rented. As I pointed out at our last appearance --

THE COURT: He asked about a specific building.

MR. IANNUZZI: Yes, sir.

MR. PUCCIO: That's -- I know he asked about a specific building and it's the same building where the -- Mr. Dasti was living and where the phone that was wiretapped was located. As I pointed out last time, I have been asked to urge the Court not to permit the disclosure of the apartments that were used by the Quebec police force in aid of this wiretapping operation because it is the feeling of --

THE COURT: Objection sustained for the reason stated.

MR. IANNUZZI: May I suggest if that be the case that there is an empty apartment and certainly there is no danger to --

THE COURT: Objection sustained.

MR. IANNUZZI: May I indicate for the record --

THE COURT: No. Next question. You're wasting too much time. And I am beginning to suspect it's because you want the trial delayed.

MR IANNUZZI: May I suggest to this Court most respectfully that I don't want this trial delayed. I have been working assiduously night and day on this case and I will continue to do so. And I will go to trial any day --

THE COURT: January 6.

MR. IANNUZZI: But I want to finish the hearing in a complete and conclusive fashion.

THE COURT: It will be complete, but only on the material matters.

MR. IANNUZZI: Yes, sir. And I suggest it is significant in this case.

THE COURT: I suggest that you talk too much.

MR. IANNUZZI: I suggest, if your Honor please, that I am only trying to protect my client.

THE COURT: I know you are. But when I say objection sustained, that means I've had enough argument. I don't want it repeated.

MR. IANNUZZI: Very well.

THE COURT: All right, next question.

MR. IANNUZZI: May I ask the Court to put on the record the reason that I -- I would even concede that if someone's apartment was being used, we do not have to have that information. But if it was an empty apartment, I don't see that Mr. Puccio's argument will be persuasive. In other words, if there is an empty apartment, nobody will be in danger. I think I am entitled to know if this was somebody's apartment. If it wasn't, then he can tell us. I will concede that, Judge.

THE COURT: You put it all on the record. Now, the next question.

MR. IANNUZZI: Very well. And may I suggest for the record as an offer of proof that I am willing to take the superintendent of that particular building down here to testify as to whether or not the police department in actuality rented apartments in that building.

THE COURT: Bring him down.

MR. IANNUZZI: I have to know in fact if it was somebody else's apartment. There is no point to it, Judge --

THE COURT: Are you waiting for me to rule on something?

MR. IANNUZZI: Yes, sir.

THE COURT: Next question, Mr. Iannuzzi.

MR. IANNUZZI: Very well, sir.

Q Now, in connection with the tap in Vegas 3, you indicated that you used a little old lady. Which one was it? The model -- the square lady or the short round model with the wires coming out on each end?

A We used the first model.

Q That would be the --

MR. PUCCIO: I object to this whole line of questioning because this was all gone over at the last proceeding. I sent a letter to the Court indicating that there is a civil suit in Canada, and I strongly suspect that all of this testimony is being elicited for another proceeding and not for this matter because it is certainly irrelevant.

THE COURT: I don't recall it was brought out. Was this testified --

MR. IANNUZZI: Absolutely not. We didn't even know today that there were two different little old ladies.

THE COURT: Go ahead, Mr. Iannuzzi.

MR. IANNUZZI: Thank you.

THE COURT: I don't want to hear your question. Answer the question.

Q Was it the model 1 which is indicated on your slide 50? That is to say, the square model or the slide 51, which is the modified version?

A The square model.

Q Very well. And when this was hooked up --

MR. IANNUZZI: May we see, if your Honor please, slide No. 47 for the purpose of having this further examination?

THE COURT: All right.

MR. IANNUZZI: That's it.

Q Now, Mr. La Valle, I would like to ask you what is the telephone number of the police headquarters, which would be what you marked here, Headquarters 1701 Parsion? What would be the telephone number in that area?

A It's -- you mean the exchange?

Q Yes.

A I don't recall now what number of the exchange. But I can always inquire about that.

Q Well, is it not in fact different than the telephone number of Mr. Dasti, which was 488? Different exchange?

A Different exchange. I think it's 527, the exchange.

Q Different exchange.

Now, do you know whether or not in fact the -- what did you say it was?

A 527.

Q 527. That the 527 central office is different than the 488 central office?

A Yes.

Q Therefore, when you made this design that the target phone goes to the central office and then goes to Montreal, Canada, Quebec police force, that in fact this is not a correct representation of what actually happens because this suspect phone has one central office and this headquarters has a different central office, and between the two central offices would be further direct connections; is that so?

A We build that -- that picture up to help as much as possible.

Q But isn't it a fact that there would be two central offices?

A Can I answer the question, sir?

THE COURT: Isn't there another central office in that set-up that hasn't been shown?

THE WITNESS: There could be a half-dozen central offices.

THE COURT: That's the answer. Go ahead.

THE WITNESS: Well, two telephone exchanges.

Q So that when you put one central office, that is not a correct -- that is just for an example, but that there may be -- well, there is in fact at least two and perhaps up to a half-dozen central offices in between?

A That's quite possible, sir.

Q Very we-l. Now, in reference to Vegas 5 and Vegas 11 -- by the way, if I refer to these numbers, do you know which ones I am referring to?

A Yes.

Q Okay. In other words, the ones in reference to Mr. Cotroni's house, these were not installed in the same kind of terminal box that you installed Vegas 3?

A No.

Q In other words, there was no terminal box of that sort?

A It's outside the terminal box.

Q All right. And did you in the same fashion as you testified about Vegas 3, did you rent an apartment or a place nearby?

A Yes, sir.

Q And did you rent a phone there?

A Yes, sir.

Q Do you know what the number of the phone was that you rented?

A No. I wouldn't risk to give you the information because we might involve people of any type.

Q Well, do you know whether or not there were other people or whether there were no other people involved?

MR. PUCCIO: I object to this line of questioning, your Honor.

THE COURT: May I have the question, Mr. Barbella?

(Record read.)

THE COURT: Objection sustained.

MR. IANNUZZI: May I, if your Honor please, have a continuing objection to the --

THE COURT: Yes, you have an objection to every ruling I make.

MR. IANNUZZI: Very well.

THE COURT: Now, that is because the rules say so.

MR. IANNUZZI: Very well. Thank you.

Q And in connection with the Vegas 5, was there a separate telephone rented in order to intercept those conversations?

A Vegas 5 is what address?

Q Cotroni at 6649 Chauvin.

A Yes. There was an apartment rented there.

Q And a separate telephone?

A Yes.

Q Now, in reference to Vegas 11 also at 664, was there a separate telephone rented?

A Yes. Another telephone line.

Q In other words, two telephone lines?

A Yes.

Q Were they both in the same place?

A Yes, sir.

Q And these were brought back also through your diagram and through however many central offices there were to the central office where the police headquarters was?

A Yes, sir.

Q Is that correct?

A Yes, sir.

Q And in reference to Vegas 7 and 11, was the -- withdrawn.

In reference to 3 -- I am sorry, withdrawn.

5 and 11, both in reference to Cotroni, did you use little old ladies there?

A Yes.

Q Do you know whether it was the square model, slide 50, or the round model, 51?

A We used the square one.

Q Do you know where it was located, where you placed it?

A On the pole. I have shown it on the slide.

Q Slides 10, 11, 12? Something like that?

A Fourteen and fifteen.

Q Very well. Now, was it actually placed --

MR. IANNUZZI: May I have these marked for identification, if your Honor please?

THE COURT: Have them marked.

THE WITNESS: Your Honor, can I consult with Puccio at this point?

THE COURT: Sure. You can step down.

The witness asks that he consult with Mr. Puccio.

MR. IANNUZZI: Pardon me?

THE COURT: The witness wants to consult with Mr. Puccio. I have allowed him to step down and talk to Mr. Puccio.

THE CLERK: Two photographs marked Defendant Cotroni's Exhibits B and C for identification.

MR. PUCCIO: Your Honor, I have explained before that there's been a civil suit brought in Montreal against the Quebec police force. And I would just like Mr. LaValle to consult with --

THE COURT: That would make no difference. And I don't see why it should make any difference. If they are going to learn it, they will learn it. If it is

relevant here, I cannot refuse to have the question asked because of a civil suit. The only objection is that it's irrelevant and it is just wasting time. If it is, then let him get his own deposition up on Montreal. I am not going to try a Montreal case here.

MR. IANNUZZI: May I suggest that at no time in my asking any questions in connection with any civil suit. I have no interest in it and I have no participation in it.

THE COURT: Mr. Cotroni does.

MR. IANNUZZI: That may be so, but --

MR. PUCCIO: Mr. Dasti.

MR. IANNUZZI: I do not represent Mr. Dasti.

THE COURT: No. But Mr. Dasti is here.

MR. PUCCIO: And Mr. Maranda represents Mr. Dasti.

THE COURT: Who?

MR. PUCCIO: Mr. Maranda is here and I understand he represents Mr. Dasti's wife in that civil suit.

(continued next page)

THE COURT: All I am interested in is saving time. Because that is no excuse for not permitting the question to be asked because it might be used in a civil suit. If it was the other way around --

MR. PUCCIO: Your Honor --

THE COURT: (Continuing) -- it may not be asked because of the right of self-incrimination.

MR. PUCCIO: I have no objection to the question other than on the grounds of relevancy, but Mr. La Valle wanted to consult with me.

THE COURT: Yes. You must answer the questions if they are relevant in this action. The truth is the truth whether it's here or in Montreal.

MR. IANNUZZI: Thank you, sir.

Q May I show you Defendant's Exhibits B and C, and ask you if you recognize what they are.

A These are terminal 49 -- model terminal approximately from the telephone company.

Q Do you see in Exhibit B the back of Cotroni's house and telephone pole on which you mounted your little old lady?

A That could be taken anywhere in America, except --

MR. IANNUZZI: May we then see, if your Honor please, slide Nos. 14 and 15? I would like to save a

little time by doing it that way.

THE COURT: Where is the projectionist? Can you manage it, Mr. Puccio?

THE WITNESS: I think I can.

MR. IANNUZZI: Do you know how to do this?

THE WITNESS: 14.

MR. IANNUZZI: May we have 15.

MR. PUCCIO: Is that it?

THE WITNESS: Yes.

MR. PUCCIO: Close-up; is that it?

THE WITNESS: Yes.

MR. IANNUZZI: All right.

Q Now, is it your testimony, Mr. La Valle, that in connection with Vegas 5, which was in connection with your Cotroni at central office 256, and Vegas 11, also Cotroni at central office 256, that the little old lady was placed in that box?

A Up on the pole there.

Q Was it in the box or outside the box?

A It was not in the box. The aluminum box was the rubber terminal on the cable.

Q I see. Well, do you know Defendant's Exhibit C before you?

A Yes, sir.

Q In that does it show the kind of box you would have installed it?

A It's a -- similar. Looks --

Q Similar box?

A Yes.

Q So, in other words, it was -- it would not be that particular one, but that particular model?

A Yes. 49A.

Q Is it your testimony that you put the little old lady inside of that?

A Yes, sir.

Q All right.

MR. IANNUZZI: May I have that introduced in evidence?

THE COURT: Mr. Puccio?

MR. PUCCIO: No objection.

THE WITNESS: I am sorry. Inside that terminal showing on picture 15 -- not yours.

Q Yes.

Of course. I understand what you are saying. But this is the -- this is offered just for the purpose of the model type.

THE COURT: You say it's similar.

THE WITNESS: Similar.

THE COURT: That's all.

No objection. Let it be marked.

THE CLERK: Both?

MR. IANNUZZI: No, just C.

THE CLERK: Defendant Controni's Exhibit C previously marked for identification now marked in evidence in the hearing.

Q And the little old lady was inside of that?

A Yes, sir.

Q When I say "that," I mean the terminal box inside that rubber casing, correct?

A Yes, sir.

Q And the central office in reference to Cotroni's phone 256, was that central office different than the telephone in connection -- the central office in connection with that Dasti office phone 488?

A You mean the -- there would be two different central offices.

Q Yes.

All right. And both of these central offices -- in other words, the 488 central office and the 256 central office was different again from the central office in reference to Vegas 1B and PT where the exchange was 677?

A Yes. All along the line of those operations.

Q Each one is a different central office?

A Yes, sir. And between the two you can have a half-dozen central offices for connections.

Q Other central offices.

A That is a lot of central offices.

Q Yes, sir. Now --

MR. IANNUZZI: By the way, if your Honor please, I don't believe I -- I don't think we need this slide. So if they want to shut the machine --

THE COURT: All right.

Q And in connection with the Salon Pierre, which little old lady did you use? The one in slide 50, which is the square one or the round one?

A We used a square one to start with, yes.

Q Was that inside a -- the same kind of casing terminal box as Cotroni or the same kind of terminal box in Dasti? In other words, was it inside or outside?

A It was the one that I have shown on slide No. --

Q 17, 18, 20?

A Slide 20, yes. But it was not inside of the terminal. That terminal is only 16 -- small terminal. We extend our wire to conceal properly the two little old ladies.

Q Now -- in other words, each of those Vegas 7 and 8, each of those had their own separate telephone lines?

A Yes, sir.

Q That was rented from the Bell Telephone Company?

A Yes, sir.

Q And they were placed somewhere in the vicinity of the barber shop?

A Yes.

Q And -- in other words, something -- some observation post was rented; is that correct?

A Yes, sir.

Q Do you know whether there was an empty place or were there people living in connection with that?

MR. PUCCIO: I object. I object, your Honor, to this line of questioning again into any questions which elicit answers that would reveal the locations of these observation posts.

THE COURT: May I have the question before, Mr. Barbella?

(Record read.)

MR. PUCCIO: And the next question is --

THE COURT: Well, wait for the next question. I can't rule on the next question. I can only rule on this one.

Objection overruled.

THE WITNESS: Well, sir, if I give that

information, it will definitely lead you to a precise --

THE COURT: Whether it was an empty apartment or an occupied apartment?

THE WITNESS: I feel --

THE COURT: No. I direct you to answer that.

THE WITNESS: It was an empty apartment.

Q And --

MR. IANNUZZI: If your Honor please, in connection with that same question, would you direct the witness to answer that as to the other locations, just whether they were empty or whether there were people there. If they were empty, I will accept that.

THE COURT: How many other apartments were there?

THE WITNESS: In that last operation?

Q Not in connection with this Vegas 7 and 8, but for instance, in connection with Vegas 3.

THE COURT: With all the Vegas, tell us whether there were some empty and some occupied.

THE WITNESS: I don't remember in precise --

THE COURT: You don't remember the -- but were there others that were vacant or were they all -- were the others occupied?

THE WITNESS: Mostly vacant.

THE COURT: Then that's the answer. No further

questions along those lines. That in no way would identify the location and still give you all the information you need for cross-examination.

MR. IANNUZZI: Yes, sir.

Q And in reference to Vegas 7 and 8, they seem to have different exchanges. One is 842 and one is 849. Do you know whether they are separate central offices or the same?

A That's the same central office.

Q Same central office?

A Yes.

Q These two were all brought back to police headquarters?

A Yes, sir.

Q Now, in connection with Vegas 9, Mendola, in what did you place your little old lady?

A In the terminal box.

Q Was that on the pole?

A Yes, sir.

Q And may I ask this: Which little old lady did you use, by the way?

A We used the new model, the small one.

Q The small model, all right. Now, in connection with all of these -- all of these little old ladies being connected, whether they were in the box itself or immediately

under or behind the box, definitely there were wires that protruded into and connected to terminals in the box?

A Yes, sir.

Q Is that correct?

A Yes, sir.

Q So that in every exchange you had wires inside the various boxes?

A Yes, sir.

Q And --

THE COURT: Excuse me. Wasn't there a time that the defendant said they required an interpreter? During the first hearing we had an interpreter.

MR. IANNUZZI: No, sir.

MR. PUCCIO: The defendants decided that --

MR. IANNUZZI: Mr. Dasti --

MR. PUCCIO: Mr. Dasti would --

THE COURT: All right.

MR. PUCCIO: (Continuing) -- interpret for Cotroni.

MR. KLAR: If there are any questions, Mr. Dasti will interpret for Mr. Cotroni.

THE COURT: There is no claim that the defendants were not provided with an interpreter here.

MR. KLAR: As far as Mr. Dasti is --

THE COURT: Because I see an interpreter in

court ready to interpret.

MR. IANNUZZI: I think that is more for the witnesses.

MR. PUCCIO: For the witnesses.

THE COURT: All right.

Q Now, in reference to Vegas 12 --

MR. PUCCIO: Excuse me. Your Honor, you asked about Mr. Dasti. I take it, there is no claim on Mr. Cotroni's part that he is being deprived of an interpreter.

MR. IANNUZZI: We had decided, if your Honor please, that Mr. Dasti would be sufficient for Mr. Cotroni if there are any problems.

THE COURT: I am just -- I am concerned about Mr. Dasti because Mr. Dasti is under the Criminal Justice Act. And the question is whether he can afford an interpreter.

MR. KLAR: No claim is made nor will be made.

THE COURT: All right.

Q Sir, in reference to Vegas 12, was that also by way of -- use of a little old lady?

A Yes. What was that?

Q 12. That was Orsini.

A Yes.

Q That'sa little old lady? Was that placed inside the terminal box?

A Yes.

Q And was it on the pole or in the building?

A On the pole.

Q Very well. And which model was used? The modified model or the older model?

A The modified.

Q The modified. And this 374 exchange is again different than all the others and has a different central office; is that correct?

A Yes, sir.

Q Now, when all of the Vegas projects -- that is to say, with the exception of 3A, which is the Laurentio telephone and 1B and PT, were all the others, that is, 3, 5, 7, 8, 9, 11 and 12, the seven were in operation, they were all in operation at the same time?

A Yes, sir.

Q All of them were brought back through the police department central office to the monitoring room?

A Yes.

Q Is that correct?

A Yes.

(continued next page)

CROSS-EXAMINATION

BY MR. IANNUZZI: (Cont'd.)

Q And do you know at any time whether the telephone company was paid for dedicated lines, that is to say, lines that would be constantly opened for that purpose?

A They were rented lines.

Q The question is were they rented as ordinary telephones or as a dedicated line?

A They were rented as a rented line.

Q And the telephone company was not paid extra mileage fo go from police headquarters to Dasti's house?

A No.

Q How far a distance is that, do you know?

A I am just thinking, maybe eight miles, nine miles.

May I just have a moment, your Honor?

THE COURT: Yes.

Q Mr. Lavallee, within recent times since the last time you were here, did you not indicate on wide spread broadcast either by television or radio, that in fact, acting, the Director General Adrienne Robert gave you a direct order as a police official, not to wiretap?

A I answered that before.

THE COURT: Did you say it on television?

THE WITNESS: I mentioned it on the radio about what we discussed before, yes, sir.

Q Did you indicate then that Robert gave you a direct order?

A I don't recall if I said a direct but that we were informed not to wiretap.

Q And did you also indicate on the radio that thereafter, your squad got together and decided to disregard the order?

THE COURT: Did you use the word "order"?

THE WITNESS: I don't recall, sir.

Q You may have?

A I probably did.

Q You probably did?

A Yes.

Q And did you also indicate on the radio that your squad decided to disregard this direct order?

A Yes.

MR. IANNUZZI: I have no further questions.

THE COURT: Mr. Klar?

MR. KLAR: I have no questions.

MR. ROSENTHAL: I have no questions.

THE COURT: Any redirect, Mr. Puccio?

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REDIRECT EXAMINATION

BY MR. PUCCIO:

Q Mr. Lavallee, do you recall when Mr. Robert, the Director General gave you this direct order, as you say?

A The right time, I don't recall, sir.

Q The approximate year?

A I don't remember.

THE COURT: Was it before you started the wiretaps or during the time?

THE WITNESS: Before.

THE COURT: Before you started the wiretaps?

THE WITNESS: Yes.

Q Do you know if that order was ever rescinded?

THE COURT: Let the record show that the witness asked Mrs. Clancey who happens to be in court, what the word rescinded means. Taken back, nullified.

THE WITNESS: Yes. I don't recall that either.

THE COURT: Was the order, direction or order, was it ever put in writing in any form whatsoever?

THE WITNESS: No, sir.

THE COURT: How was it given to you, at a meeting, a formal meeting, at a social club, at a police station, at a bar in a home?

THE WITNESS: In Mr. Menard's office. He called us in and he said , "I just saw the director

and he said he doesn't want us to do wiretapping from now on."

THE COURT: Did Mr. Robert ever tell you that direct?

THE WITNESS: No, sir.

BY MR. PUCCIO:

Q So there was just the occasion when Mr. Menard spoke to you and no occasion when the Director General spoke to you himself. Is that correct?

A That's correct.

Q Do you remember who else was present when this conversation was had with Mr. Menard concerning what the Director General had said?

A There was so many men that changed in these years, I wouldn't risk a name.

THE COURT: Was anyone else present?

THE WITNESS: Yes, there was.

MR. PUCCIO: I have no further questions.

THE COURT: Recross, Mr. Iannuzzi?

MR. KLAR: May I have a moment to inquire?

THE COURT: First Mr. Iannuzzi.

MR. IANNUZZI: No, your Honor.

THE COURT: All right, Mr. Klar.

RECROSS-EXAMINATION

BY MR. KLAR:

Q Mr. Lavallee, did Mr. Robert -- withdrawn. Did Mr. Menard at any time, after directing you to discontinue the operation, the wiretap operation, direct you to continue that operation?

A Direct, you mean giving us --

THE COURT: Told you.

Q Did he tell you,"Forget what I told you before, go ahead and continue your operation."?

A Maybe it was not in that way. I don't recall.

Q But if he had told you, you would have remembered, would you not?

A I am not the type to remember all these details.

Q Who was present at this staff meeting?

A Like I said, I wouldn't risk a name because I might make a mistake again. There were so many men that changed.

Q How many men were there?

A Probably half a dozen.

Q And all these men were involved in these various Vegas projects?

A Vegas didn't exist at that time.

Q Were they involved in the Cotroni and Dasti matter?

A No, they didn't exist at that time.

Q So, nevertheless, after the staff meeting, you decided together with the other members of your staff to go ahead and continue the operation?

A Yes, sir.

THE COURT: Can you tell us how long before the wiretaps began in this case that this had occurred?

THE WITNESS: I have to check records.

THE COURT: Was it a matter of days, a month, a year?

THE WITNESS: Months and years.

MR. KLAR: Excuse me one second, your second, your Honor.

I have no further questions.

THE COURT: Mr. Rosenthal?

MR. ROSENTHAL: No, your Honor. I have nothing.

THE COURT: Anything further?

You may step down.

MR. PUCCIO: May I have permission to call Mr. Patenaude for just a few questions?

MR. IANNUZZI: The difficulty with this, your

Honor, is that Mr. Patenaude testified and after he testified the last time Mr. Puccio testified that it would be permissible for him to be in the courtroom.

MR. PUCCIO: You don't object to that?

MR. IANNUZZI: Since he had finished with his testimony. Mr. Patenaude stayed after having listened to the testimony to refortify some testimony that this witness just testified to.

THE COURT: Certainly.

MR. IANNUZZI: I think that is a little bit objectionable.

THE COURT: A little bit?

MR. IANNUZZI: It's objectionable.

THE COURT: If it's objectionable a little bit, it is overruled.

MR. IANNUZZI: Well, it's a whole lot --

THE COURT: Well, if it's a whole lot, the objection is overruled.

Did you read any of the testimony with respect to your prospective witnesses, did you use the testimony of the witnesses produced so far to go over with your prospective witnesses?

MR. IANNUZZI: I did with an expert to go over a hypothetical question. This is a factual question and I object on that basis.

THE COURT: Someday a Court of Appeals is going to say, "Well, we think that the motion to exclude all witnesses and all decisions thereunder are game playing. A lawyer can take a transcript, go over it with a witness who wasn't supposed to be in the courtroom and that's all right, but he can't be here to hear it."

All right. Go ahead, Mr. Puccio.

H E R V E P A T E N A U D E, called as a witness, having been previously sworn, resumed the stand and testified further as follows:

THE COURT: You have been sworn and you are still under oath.

DIRECT EXAMINATION

BY MR. PUCCIO:

Q You were present during Mr. Lavalle's testimony concerning a meeting with a Lt. Menard of the Quebec Police Force?

A I heard his testimony, yes.

Q Do you recall that meeting?

A Well --

Q Or were you present at that meeting?

A No, I was not.

Q Do you recall at any time being advised by the Director General or someone under him such as Lt. Menard

to discontinue wiretapping or not to embark on wiretapping projects?

A Could I have that question again, please?

Q Yes. Have you ever been told at any time during your entire career with the Quebec Police Force by anyone, the Director General or anyone under him or anyone else not to do any wiretapping or not to have your men do any wiretapping?

A No, I have not.

If I may make a statement here, your Honor, Mr. Robert, now deceased, became director of the Quebec Police Force in October of 1965. He examined all the services then in use at the Quebec Police Force. I became involved in the scientific research section where wiretaps are done, in the Quebec Police Force shortly after Mr. Robert's arrival. If I recall correctly, this would be possibly in the early summer of 1966. He gave me the immediate supervision of that unit, with specific recommendations which I have stated here before. The service developed continually and after Mr. Robert's death --

THE COURT: When did he die?

THE WITNESS: I believe he left the Quebec Police Force sometime towards the end of possibly

October or November of 1967. Then we had a new directo and the authorization was continued after he had made his examination. The wiretaps in point, and in the time frame that we are now speaking, were done, the wiretaps were made roughly five years, three years after Mr. Robert's death under my authority and in accordance with the directives that had been verbally given to me by my superiors.

MR. PUCCIO: That's all I have, your Honor.

THE COURT: Any cross-examination?

MR. IANNUZZI: May I have a moment, sir?

THE COURT: Yes.

CROSS-EXAMINATION

BY MR. IANNUZZI:

Q Was the authorization to wiretap ever put in writing, after the death of Mr. Robert?

A I previously testified to the effect that our authorization to wiretap is verbal from all of our directors.

Q Just as the order not to wiretap?

A Pardon me?

Q Just as the order not to wiretap?

A I never received any instructions from my superiors not to wiretap.

Q Do you know whether or not the lieutenant

gave his men those instructions as being dogma directly from the Director General?

A I wasn't in charge of that particular department at that particular time. They were directly attached to the office of Mr. Robert.

Q Would it be fair to say you couldn't testify that he did not give those instructions to the squad?

A I am unaware of any directives that he may have given to that particular department when they were solely responsible to him.

MR. IANNUZZI: Very well, Nothing further.

THE COURT: Anything further?

You may step down.

Next witness, Mr. Puccio.

MR. PUCCIO: Yes. We would call Mr. Landry. This is going to be testimony of legality and admissibility of wiretapping. I have other witnesses on the tapes themselves. But Mr. Landry is here now and I would like to get his portion completed.

MR. IANNUZZI: I have no objection to that procedure, sir.

(Continued on next page.)